Climate Change Response Act 2002
Unofficial version showing amendments proposed by
Climate Change Response (Emissions Trading Reform)
Amendment Bill (as introduced)

This document has been prepared to assist public submissions and select committee consideration of the amendment Bill. Note:

• It does NOT have official status
• It does NOT have the status of a Bill
• It shows the Act plus proposed amendments from the Climate Change Response (Emissions Trading Reform) Amendment Bill (as introduced) that are proposed to commence on the day after Royal assent.
• It does not include amendments that are proposed to commence on later dates.

Key
This document shows amendments as follows:

- **text inserted**: new text as proposed by the amendment Bill as introduced
- **text deleted**: text proposed to be deleted by the amendment Bill as introduced
- **unamended text**: unamended text shown to put amendments in context
# Climate Change Response Act 2002

Unofficial version showing amendments proposed by Climate Change Response (Emissions Trading Reform) Amendment Bill (as introduced)

## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Title</td>
<td>22</td>
</tr>
<tr>
<td><strong>Part 1</strong> Preliminary provisions</td>
<td></td>
</tr>
<tr>
<td>2 Commencement</td>
<td>22</td>
</tr>
<tr>
<td>2A Application of Schedules 3 and 4</td>
<td>22</td>
</tr>
<tr>
<td>2B Orders in Council in relation to Part 5 of Schedule 3</td>
<td>23</td>
</tr>
<tr>
<td>2C Effect of Orders in Council in relation to Part 5 of Schedule 3</td>
<td>24</td>
</tr>
<tr>
<td>3 Purpose</td>
<td>26</td>
</tr>
<tr>
<td>3A Treaty of Waitangi (Te Tiriti o Waitangi)</td>
<td>27</td>
</tr>
<tr>
<td>4 Interpretation</td>
<td>30</td>
</tr>
<tr>
<td>4A Greenhouse gas definition may be amended to add gases</td>
<td>52</td>
</tr>
<tr>
<td>4B Transitional, savings, and related provisions</td>
<td>52</td>
</tr>
<tr>
<td>4A Transitional, savings, and related provisions</td>
<td>52</td>
</tr>
<tr>
<td>5 Act binds the Crown</td>
<td>52</td>
</tr>
<tr>
<td><strong>Part 1A</strong> Climate Change Commission</td>
<td></td>
</tr>
<tr>
<td>Subpart 1—Establishment and appointments</td>
<td></td>
</tr>
<tr>
<td>5A Climate Change Commission established</td>
<td>52</td>
</tr>
<tr>
<td>5B Purposes of Commission</td>
<td>52</td>
</tr>
<tr>
<td>Subpart</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>5C</td>
<td>Commission is Crown entity</td>
</tr>
<tr>
<td>5D</td>
<td>Membership of Commission</td>
</tr>
<tr>
<td>5E</td>
<td>Process for appointment of members of Commission</td>
</tr>
<tr>
<td>5F</td>
<td>Establishment and membership of nominating committee</td>
</tr>
<tr>
<td>5G</td>
<td>Role of nominating committee</td>
</tr>
<tr>
<td>5H</td>
<td>Matters Minister must have regard to before recommending appointment of member of Commission</td>
</tr>
<tr>
<td>5I</td>
<td>Members’ term of office</td>
</tr>
<tr>
<td>5J</td>
<td>Commission’s functions</td>
</tr>
<tr>
<td>5K</td>
<td>Reports to Government</td>
</tr>
<tr>
<td>5L</td>
<td>Tabling and publication of Commission’s reports</td>
</tr>
<tr>
<td>5M</td>
<td>Matters Commission must consider</td>
</tr>
<tr>
<td>5N</td>
<td>Consultation</td>
</tr>
<tr>
<td>5O</td>
<td>Commission must act independently</td>
</tr>
<tr>
<td>5P</td>
<td>Obligation to maintain confidentiality</td>
</tr>
<tr>
<td>5Q</td>
<td>Target for 2050</td>
</tr>
<tr>
<td>5R</td>
<td>Review of inclusion of emissions from international shipping and aviation in 2050 target</td>
</tr>
<tr>
<td>5S</td>
<td>Other 2050 target reviews</td>
</tr>
<tr>
<td>5T</td>
<td>Recommendations to amend 2050 target</td>
</tr>
<tr>
<td>5U</td>
<td>Government response to target review recommendations</td>
</tr>
<tr>
<td>5V</td>
<td>Interpretation</td>
</tr>
<tr>
<td>5W</td>
<td>Purpose of this subpart</td>
</tr>
<tr>
<td>5X</td>
<td>Duty of Minister to set emissions budgets and ensure they are met</td>
</tr>
<tr>
<td>5Y</td>
<td>Contents of emissions budgets</td>
</tr>
<tr>
<td>5Z</td>
<td>How emissions budgets are to be met</td>
</tr>
<tr>
<td>5ZA</td>
<td>Commission to advise Minister</td>
</tr>
<tr>
<td>5ZB</td>
<td>Minister’s response to Commission</td>
</tr>
<tr>
<td>5ZC</td>
<td>Matters relevant to advising on, and setting, emissions budgets</td>
</tr>
<tr>
<td>5ZD</td>
<td>Publication of emissions budgets</td>
</tr>
<tr>
<td></td>
<td><strong>Revision of emissions budgets</strong></td>
</tr>
<tr>
<td>5ZE</td>
<td>When emissions budgets may be revised</td>
</tr>
<tr>
<td></td>
<td><strong>Banking and borrowing</strong></td>
</tr>
<tr>
<td>5ZF</td>
<td>Power to bank or borrow</td>
</tr>
</tbody>
</table>
### Emissions reduction plan to be prepared

- **5ZG** Requirement for emissions reduction plan
- **5ZH** Commission to advise on emissions reduction plans
- **5ZI** Minister to prepare and make emissions reduction plan publicly available

**Subpart 4—Monitoring**

- **5ZJ** Commission to monitor progress towards meeting emissions budgets
- **5ZK** Commission to report annually on results of monitoring
- **5ZL** Commission to report at end of emissions budget period

**Subpart 5—Effect of 2050 target and emissions budgets**

- **5ZM** Effect of failure to meet 2050 target and emissions budgets
- **5ZN** 2050 target and emissions budget are permissive considerations
- **5ZO** Guidance for departments

### Part 1C

#### Adaptation

**National climate change risk assessment**

- **5ZP** National climate change risk assessment
- **5ZQ** Preparation of national climate change risk assessment
- **5ZR** Minister must prepare first national climate change risk assessment

**National adaptation plan**

- **5ZS** National adaptation plan
- **5ZT** National adaptation plan must be presented to Parliament and made publicly available

**Progress reports**

- **5ZU** Progress reports on national adaptation plan
- **5ZV** Minister must respond to progress report

**Power to request provision of information**

- **5ZW** Minister or Commission may request certain organisations to provide information on climate change adaptation
- **5ZX** Regulations relating to requiring provision of information

### Part 2

#### Institutional arrangements

**Subpart 1—Ministerial powers**

- **6** Minister of Finance may direct Registrar regarding establishment of Crown holding accounts and carry out trading activities with respect to units
- **6A** Minister’s power to sell by auction
- **7** Minister of Finance may give directions to Registrar regarding accounts and units
Climate Change Response Act 2002
Unofficial version showing amendments proposed by
Climate Change Response (Emissions Trading Reform)
Amendment Bill (as introduced)

8 Registrar must give effect to directions of Minister of Finance 76
8A Minister of Finance must publish directions 76
9 Minister of Finance may obtain information from inventory agency and Registrar

Subpart 1A—Chief executive
9A Functions of chief executive 76
9B Delegation by chief executive 77

Subpart 2—Registry

Purpose of Registry
10 Purpose of Registry 77

Registrar
11 EPA to appoint Registrar 78
12 Registrar responsible for Registry 78
13 Registrar may refuse access to, or suspend operation of, Registry 78
14 Registrar must give effect to directions 78
15 Registrar to allocate unique numbers 79
16 Carry-over of certain Kyoto units 79
17 Commitment period reserve 79
17A Power of Registrar to delegate 80

Unit register
18 Form and content of unit register 80
18A Opening holding accounts 81
18B Closing holding accounts 82
18C Transfer of units 83
18CA Effect of surrender, retirement, cancellation, and conversion and cancellation 83
18CB Restriction on surrender of assigned amount units 84
18CC Restriction on surrender of assigned amount units issued during first commitment period 84
18CD Effect of surrendering restricted assigned amount units 84
18D Succession 85
18E Trusts, representatives, and assignees of bankrupts 85
19 Retirement of Kyoto units by the Crown 86
20 Transactions must be registered 86
21 Registration procedure for Kyoto units 86
21AA Registration procedure for New Zealand units and approved overseas units 87
21A Electronic registration 89
21B Defective applications 89
22 Transactions take effect when registered 89
23 Receiving Kyoto units from overseas registries 90
23A Receiving New Zealand units and approved overseas units from overseas registries 90
24 Priority of registration 91
25 Correction of unit register 91
26 Unit register must be open for search 92
27 Information accessible by search 92
28 Search of unit register 95
29 Printed search result receivable as evidence 95
30 Recovery of fees 95
30A The Crown or Registrar not liable in relation to searches in certain cases 95

**Expiry of long-term certified emission reduction units and temporary certified emission reduction units**

30B Expiry of long-term certified emission reduction units 96
30C Replacement of certain long-term certified emission reduction units 96
30D Expiry of temporary certified emission reduction units 97

**Miscellaneous provisions**

30E Conversion of New Zealand units into designated assigned amount units for sale overseas or cancellation 97
30F Restrictions on certain New Zealand units allocated to landowners of pre-1990 forest land 98
30G Regulations relating to Part 2 99
30GA Further provisions governing regulations made under section 30G(1)(p) 102
30GB Further provisions governing regulations made under section 30G(1)(q) 103
30GA Regulations for auctions to sell New Zealand units 103
30GB Regulations about overall limits and price control settings for units 104
30GC Requirements for regulations about overall limits and price control settings for units 106
30GD Regulations for auction monitor 108
30GE Sharing information with auction monitor 108
30GF Obligation of confidentiality on auction monitor 109
30GG Offence for breach of auction monitor’s obligation of confidentiality 109
30H Procedure for certain regulations relating to units and auctions 110
30I Incorporation by reference in regulations made under section 30G 110
30IA Minister must obtain emission reductions to match reserve amounts of units released 111
30J Signing false declaration with respect to regulations made under section 30G or 30GA 111
30K Providing false or misleading information to Registrar 111
### Subpart 3—Infringement offences

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>30L</td>
<td>Meaning of infringement offence and infringement fee</td>
<td>112</td>
</tr>
<tr>
<td>30M</td>
<td>Regulations about infringement offences</td>
<td>112</td>
</tr>
<tr>
<td>30N</td>
<td>Procedure for regulations about infringement offences</td>
<td>112</td>
</tr>
<tr>
<td>30O</td>
<td>Proceedings for infringement offences</td>
<td>113</td>
</tr>
<tr>
<td>30P</td>
<td>Appointment of enforcement officers</td>
<td>113</td>
</tr>
<tr>
<td>30Q</td>
<td>When infringement notice may be issued</td>
<td>113</td>
</tr>
<tr>
<td>30R</td>
<td>Infringement notice may be revoked</td>
<td>113</td>
</tr>
<tr>
<td>30S</td>
<td>What infringement notice must contain</td>
<td>114</td>
</tr>
<tr>
<td>30T</td>
<td>How infringement notice may be served</td>
<td>114</td>
</tr>
<tr>
<td>30U</td>
<td>Payment of infringement fees</td>
<td>115</td>
</tr>
<tr>
<td>30V</td>
<td>Reminder notices</td>
<td>115</td>
</tr>
</tbody>
</table>

### Subpart 4—Regulations setting price of carbon

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>30W</td>
<td>Regulations setting price of carbon</td>
<td>115</td>
</tr>
</tbody>
</table>

### Part 3

#### Inventory agency

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>Meaning of greenhouse gas</td>
<td>116</td>
</tr>
<tr>
<td>32</td>
<td>Primary functions of inventory agency</td>
<td>116</td>
</tr>
<tr>
<td>33</td>
<td>Inventory agency under direction of Minister</td>
<td>117</td>
</tr>
<tr>
<td>34</td>
<td>Record keeping</td>
<td>117</td>
</tr>
<tr>
<td>35</td>
<td>Publication</td>
<td>117</td>
</tr>
</tbody>
</table>

#### Inspectors

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>Authorisation of inspectors</td>
<td>117</td>
</tr>
<tr>
<td>37</td>
<td>Power to enter land or premises to collect information to estimate</td>
<td>118</td>
</tr>
<tr>
<td></td>
<td>emissions or removals of greenhouse gases</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Limitation on power of entry under section 37</td>
<td>119</td>
</tr>
<tr>
<td>39</td>
<td>Power of entry for inspection</td>
<td>119</td>
</tr>
<tr>
<td>40</td>
<td>Applications for warrants</td>
<td>120</td>
</tr>
<tr>
<td>41</td>
<td>Entry of defence areas</td>
<td>120</td>
</tr>
<tr>
<td>42</td>
<td>Proof of authority must be produced</td>
<td>121</td>
</tr>
<tr>
<td>43</td>
<td>Notice of entry</td>
<td>121</td>
</tr>
<tr>
<td>44</td>
<td>Information obtained under section 39 or section 40 only admissible</td>
<td>121</td>
</tr>
<tr>
<td></td>
<td>in proceedings for alleged breach of regulations made under section</td>
<td></td>
</tr>
<tr>
<td></td>
<td>50(2)</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Return of items seized</td>
<td>121</td>
</tr>
<tr>
<td>45A</td>
<td>Protection of persons acting under authority of this Part</td>
<td>122</td>
</tr>
</tbody>
</table>

#### Offences and penalties

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Failing to provide required information to inventory agency</td>
<td>122</td>
</tr>
<tr>
<td>47</td>
<td>Obstructing, hindering, resisting, or deceiving person exercising</td>
<td>122</td>
</tr>
<tr>
<td></td>
<td>power under Part</td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>Signing false declaration in respect of regulations made under section</td>
<td>122</td>
</tr>
<tr>
<td></td>
<td>50</td>
<td></td>
</tr>
</tbody>
</table>
48A Providing false or misleading information to Registrar [Repealed] 123

Miscellaneous provisions

49 Reporting 123
50 Regulations 123
51 Incorporation by reference in regulations made under section 50 125
52 Inventory agency must report to Minister on certain matters before certain regulations are made 126
53 Consequential amendments 127

Part 4
New Zealand greenhouse gas emissions trading scheme

Subpart 1—Participants

54 Participants 127
55 Associated persons 127
56 Registration as participant in respect of activities listed in Schedule 3 128
57 Applicant to be registered as participant in respect of activities listed in Schedule 4 129
58 Removal from register of participants in respect of activities listed in Schedule 4 131
59 Removal from register of participants in respect of activities listed in Schedules 3 and 4 132
59A Removal from register for persistent non-compliance (standard forestry participants only) 132
59B Removal from register if participant never carried out activity 133
60 Exemptions in respect of activities listed in Schedule 3 133
60A Exemption for participants in standard forestry or permanent forestry 135
60B Incorporation by reference in order made under section 60 or 60A 136
61 Requirement to have holding account 137
62 Monitoring of emissions and removals 137
63 Liability to surrender units to cover emissions 138
63A Modification of liability to surrender units to cover certain emissions [Repealed] 138
64 Entitlement to receive New Zealand units for removal activities 139
64A Modification of entitlement to receive New Zealand units for removal activities [Repealed] 139
65 Annual emissions returns 139
66 Quarterly returns for other removal activities 141
67 Retention of emissions records 142

Subpart 2—Issuing and allocating New Zealand units

68 Issuing New Zealand units 142
69 Notification of intention regarding New Zealand units 143
Allocation of New Zealand units in relation to pre-1990 forest land and fishing

70 Governor-General may issue allocation plans
74 Correction of allocation plans
72 Allocation in respect of pre-1990 forest land
71 Minister to appoint person to hold certain New Zealand units
74 Allocation to owners of fishing quota
75 Consultation on pre-1990 forest land allocation plan
76 Consultation on fishing allocation plan
77 Determinations made in accordance with allocation plan
78 Power to revoke and replace determinations
79 Effect of new determination
70 Allocation plan issued

Allocation of New Zealand units in relation to industry and agriculture

80 Criteria for allocation of New Zealand units to industry
81 Entitlement to provisional allocation for eligible industrial activities
82 Entitlement to allocation for eligible industrial activities where provisional allocation not received
83 Annual allocation adjustment
84 Closing allocation adjustment
84A Regulations reducing general phase-out rate
84B Regulations increasing phase-out rate for specific activities
84C Procedure for regulations setting phase-out rates
84D Climate Change Commission to advise on regulations setting phase-out rates
84A Temporary suspension of allocation entitlement for eligible industrial activities [Repealed]
85 Allocation of New Zealand units in relation to agriculture
85A Temporary suspension of phase-out rate for assistance under sections 81, 83(2), and 85(2)-Temporary suspension of phase-out rate for assistance under section 85(2)
85B Temporary suspension of allocation entitlement for eligible agricultural activities [Repealed]
86 Applications for allocation of New Zealand units for industry and agriculture
86A Provisional allocation to industry in and after 2013
86B Decisions on applications for allocations of New Zealand units to industry and agriculture
86BA Transfer of allocated units, less any units that must be surrendered or repaid
86C Reconsideration of allocation decisions
86D Retention of records and materials in relation to allocation
Minister or EPA or chief executive EPA may require further information for purpose of carrying out functions under subpart 171

Balance of units at end of true-up period or other balance date [Repealed] 173

Subpart 3—Environmental Protection Authority

General administrative provisions

Functions of EPA 173
Delegation by EPA 173
Directions to EPA 174
EPA to publish certain information 174
EPA to publish participant data on emissions and removals 176
EPA may prescribe form of certain documents 177
Approval of unique emissions factors 177
Correction of unique emissions factors 178
Recognition of verifiers 178

Verification and inquiry

Appointment of enforcement officers 179
Power to require information 179
Power to inquire 180
Inquiry before District Court Judge 180
No criminal proceedings for statements under section 95 or 96 181
Expenses in relation to inquiries 181
Obligation to maintain confidentiality 181
Power of entry for investigation 183
Applications for warrants 183
Proof of authority must be produced 184
Notice of entry 184
Information obtained under section 100 or 101 only admissible in proceedings for alleged breach of obligations imposed under this Part and Part 5 ETS participant provisions 185
Return of items seized 185
Protection of persons acting under authority of this Part 185

Emissions rulings

Applications for emissions rulings 186
Insufficient information provided for ruling on entire application 187
Matters in relation to which EPA may decline to make emissions rulings 187
Making of emissions rulings 188
Notice of emissions rulings 189
Confirmation of basis of emissions rulings 189
Notifying EPA of changes relevant to or failure to comply with emissions rulings 189
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>113</td>
<td>Correction of emissions rulings</td>
</tr>
<tr>
<td>114</td>
<td>Cessation of emissions rulings</td>
</tr>
<tr>
<td>115</td>
<td>Appeal from decisions of EPA</td>
</tr>
<tr>
<td>116</td>
<td>Effect of emissions rulings</td>
</tr>
<tr>
<td>117</td>
<td>EPA may publish certain aspects of emissions rulings</td>
</tr>
<tr>
<td>118</td>
<td>Submission of final emissions returns</td>
</tr>
<tr>
<td>119</td>
<td>Power to extend date for emissions returns</td>
</tr>
<tr>
<td>120</td>
<td>Amendment to emissions returns by EPA</td>
</tr>
<tr>
<td>121</td>
<td>Assessment if default made in submitting emissions return</td>
</tr>
<tr>
<td>122</td>
<td>Amendment or assessment presumed to be correct</td>
</tr>
<tr>
<td>123</td>
<td>Effect of amendment or assessment</td>
</tr>
<tr>
<td>124</td>
<td>Reimbursement of units by EPA</td>
</tr>
<tr>
<td>125</td>
<td>Repayment of units by persons in case of error</td>
</tr>
<tr>
<td>125</td>
<td>Repayment of units by persons in case of error</td>
</tr>
<tr>
<td>126</td>
<td>Obligation to surrender or repay units not suspended by review or appeal</td>
</tr>
<tr>
<td>127</td>
<td>Time bar for amendment of emissions returns</td>
</tr>
<tr>
<td>128</td>
<td>Amendments and assessments made by electronic means</td>
</tr>
<tr>
<td>128A</td>
<td>EPA may act if participant fails to give notice</td>
</tr>
<tr>
<td>128B</td>
<td>Effects of EPA acting after participant fails to give notice</td>
</tr>
<tr>
<td>129</td>
<td>Offences in relation to failure to comply with various provisions</td>
</tr>
<tr>
<td>130</td>
<td>Offence for breach of section 99</td>
</tr>
<tr>
<td>131</td>
<td>Offence for failure to provide information or documents</td>
</tr>
<tr>
<td>132</td>
<td>Other offences</td>
</tr>
<tr>
<td>133</td>
<td>Evasion or similar offences</td>
</tr>
<tr>
<td>134</td>
<td>Penalty for failing to surrender or repay units</td>
</tr>
<tr>
<td>134A</td>
<td>Penalty for failing to surrender or repay units when required by notice given under section 134(2)</td>
</tr>
<tr>
<td>135</td>
<td>Reductions in penalty</td>
</tr>
<tr>
<td>136</td>
<td>Additional penalty for knowing failure to comply</td>
</tr>
<tr>
<td>134</td>
<td>Penalty for failing to surrender or repay units by due date</td>
</tr>
<tr>
<td>134A</td>
<td>Penalty for failing to submit emissions return by due date</td>
</tr>
<tr>
<td>134B</td>
<td>Penalty for failing to submit annual or closing allocation adjustment by due date</td>
</tr>
<tr>
<td>134C</td>
<td>Penalty for submitting incorrect emissions return</td>
</tr>
<tr>
<td>134D</td>
<td>Penalty for providing incorrect information in allocation application or adjustment</td>
</tr>
<tr>
<td>135</td>
<td>Due dates for payment of penalties</td>
</tr>
<tr>
<td>135A</td>
<td>Deferred payment arrangements for payments of penalties</td>
</tr>
<tr>
<td>136</td>
<td>Penalties are debt due to Crown</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>137</td>
<td>Interest for late payment</td>
</tr>
<tr>
<td>138</td>
<td>Obligation to pay penalty not suspended by appeal</td>
</tr>
<tr>
<td>138A</td>
<td>Penalties to be paid into Crown account</td>
</tr>
<tr>
<td>138A</td>
<td>Penalties to be paid into Crown account</td>
</tr>
<tr>
<td>139</td>
<td>Liability of body corporate</td>
</tr>
<tr>
<td>140</td>
<td>Liability of directors and managers of companies</td>
</tr>
<tr>
<td>141</td>
<td>Liability of companies and persons for actions of director, agent, or employee</td>
</tr>
<tr>
<td>142</td>
<td>Limitation period for commencement of proceedings</td>
</tr>
<tr>
<td>143</td>
<td>Evidence in proceedings</td>
</tr>
</tbody>
</table>

Subpart 5—Review and appeal provisions

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>144</td>
<td>Request for review of decisions</td>
</tr>
<tr>
<td>145</td>
<td>Right of appeal to District Court</td>
</tr>
<tr>
<td>146</td>
<td>Appeals to High Court on questions of law only</td>
</tr>
</tbody>
</table>

Subpart 6—Miscellaneous provisions

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>147</td>
<td>Giving of notices by EPA</td>
</tr>
<tr>
<td>148</td>
<td>Giving of notices to EPA</td>
</tr>
<tr>
<td>149</td>
<td>Sharing information</td>
</tr>
<tr>
<td>150</td>
<td>Formation of consolidated group</td>
</tr>
<tr>
<td>151</td>
<td>Changes to consolidated groups</td>
</tr>
<tr>
<td>151A</td>
<td>Addition of activities to consolidated groups</td>
</tr>
<tr>
<td>152</td>
<td>Nominated entities</td>
</tr>
<tr>
<td>153</td>
<td>Effect of being member of consolidated group</td>
</tr>
<tr>
<td>154</td>
<td>Emissions returns by consolidated group in respect of activities in Part 1 of Schedule 4</td>
</tr>
<tr>
<td>155</td>
<td>Ceasing to be member of consolidated group</td>
</tr>
<tr>
<td>156</td>
<td>Effect of ceasing to be member of consolidated group</td>
</tr>
<tr>
<td>156A</td>
<td>Removal of activities from consolidated groups</td>
</tr>
<tr>
<td>157</td>
<td>Unincorporated bodies</td>
</tr>
<tr>
<td>157A</td>
<td>Changes to unincorporated bodies that are participants</td>
</tr>
<tr>
<td>158</td>
<td>Compensation for participants where public works result in liability to surrender units</td>
</tr>
<tr>
<td>159</td>
<td>Recovery of costs</td>
</tr>
<tr>
<td>160</td>
<td>Review of operation of emissions trading scheme</td>
</tr>
<tr>
<td>161</td>
<td>Appointment and conduct of review panel</td>
</tr>
<tr>
<td>161A</td>
<td>Regulations in relation to eligible industrial activities</td>
</tr>
<tr>
<td>161B</td>
<td>Australian eligible industrial activities</td>
</tr>
<tr>
<td>161C</td>
<td>Other eligible industrial activities</td>
</tr>
<tr>
<td>161D</td>
<td>Power to require information for purposes of allocation to industry</td>
</tr>
<tr>
<td>161E</td>
<td>Requirements in respect of notice given under section 161D</td>
</tr>
<tr>
<td>161F</td>
<td>Consultation on activities that may be prescribed as eligible industrial activities</td>
</tr>
<tr>
<td>clause</td>
<td>text</td>
</tr>
<tr>
<td>--------</td>
<td>------</td>
</tr>
<tr>
<td>161G</td>
<td>Regulations in relation to eligible agricultural activities</td>
</tr>
<tr>
<td>161H</td>
<td>Power to request information showing output from eligible agricultural activities</td>
</tr>
<tr>
<td>162</td>
<td>Regulations adding further activity to Part 2 of Schedule 4</td>
</tr>
<tr>
<td>162A</td>
<td>Orders are confirmable instruments</td>
</tr>
<tr>
<td>163</td>
<td>Regulations relating to methodologies and verifiers</td>
</tr>
<tr>
<td>164</td>
<td>Regulations relating to unique emissions factors</td>
</tr>
<tr>
<td>165</td>
<td>Regulations relating to offsetting of pre-1990 forest land</td>
</tr>
<tr>
<td>166</td>
<td>Procedure for regulations relating to methodologies, verification, unique emissions factors, and offsetting</td>
</tr>
<tr>
<td>167</td>
<td>Regulations relating to fees and charges</td>
</tr>
<tr>
<td>168</td>
<td>Other regulations</td>
</tr>
<tr>
<td>169</td>
<td>Incorporation by reference in regulations made under section 163, 164, 167, or 168—certain regulations</td>
</tr>
<tr>
<td>170</td>
<td>Effect of amendments to, or replacement of, material incorporated by reference in regulations</td>
</tr>
<tr>
<td>171</td>
<td>Effect of amendments to, or replacement of, material incorporated by reference in regulations</td>
</tr>
<tr>
<td>172</td>
<td>Proof of material incorporated by reference</td>
</tr>
<tr>
<td>172</td>
<td>Effect of expiry of material incorporated by reference</td>
</tr>
<tr>
<td>173</td>
<td>Requirement to consult</td>
</tr>
<tr>
<td>174</td>
<td>Public access to material incorporated by reference</td>
</tr>
<tr>
<td>175</td>
<td>Application of Legislation Act 2012 to material incorporated by reference</td>
</tr>
<tr>
<td>176</td>
<td>Application of Regulations (Disallowance) Act 1989 to material incorporated by reference [Repealed]</td>
</tr>
<tr>
<td>177</td>
<td>Application of Standards and Accreditation Act 2015 not affected</td>
</tr>
<tr>
<td>178</td>
<td>Recovery of fees or charges</td>
</tr>
<tr>
<td>178A</td>
<td>Option to pay money instead of surrendering units to cover emissions, repaying, or reimbursing units</td>
</tr>
<tr>
<td>178B</td>
<td>Issuing New Zealand units to meet surrender obligations</td>
</tr>
<tr>
<td>178C</td>
<td>Prohibition on ability to export New Zealand units</td>
</tr>
</tbody>
</table>

**Part 5**

**Sector-specific provisions**

**Subpart 1—For forestry sector**

**General**

**Part 5**

**Sector-specific provisions: forestry**

**Subpart 1—Deforestation**

<table>
<thead>
<tr>
<th>clause</th>
<th>text</th>
</tr>
</thead>
<tbody>
<tr>
<td>179</td>
<td>Forest land to be treated as deforested in certain cases</td>
</tr>
<tr>
<td>179A</td>
<td>Forest land may not be treated as deforested in certain cases</td>
</tr>
</tbody>
</table>


**Pre-1990 forest land**

Subpart 2—Pre-1990 forest land

180 Participant in respect of pre-1990 forest land  
181 When deforestation to be treated as occurring in respect of pre-1990 forest land  
182 Offsetting in relation to pre-1990 forest land [Repealed]  
183 Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land  
183A Certain applications not otherwise permitted by section 183  
183B Applications for exemption for some Maori land or land with 10 or more owners  
184 Exemptions for deforestation of land with tree weeds  
185 Effect of exemption  
185A Regulations about exemptions for deforestation of land with tree weeds  
186 Methodology for pre-1990 forest land cleared in 8 years or less

**Pre-1990 offsetting forest land**

Subpart 3—Pre-1990 offsetting forest land

186A Persons who own pre-1990 forest land may submit offsetting forest land applications to EPA  
186B Criteria for approving offsetting forest land applications  
186C Conditions applicable to offsetting forest land  
186CA Variation to approved offsetting forest land application  
186D Requirements relating to offsetting forest land  
186E Deforesting pre-1990 offsetting forest land before usual rotation period of forest species on pre-1990 forest land  
186F Regulations relating to offsetting  
186G EPA may revoke approval in certain circumstances  
186H Treatment of allocations in respect of pre-1990 forest land that is offset  
186I Participant in respect of pre-1990 offsetting forest land  
186J Methodology for pre-1990 offsetting forest land cleared after usual rotation period is completed

**Post-1989 forest land**

Subpart 4—Post-1989 forest land (standard and permanent forestry)

186K Standard and permanent forestry on post-1989 forest land  
187 Conditions on registration as participant in respect of certain activities relating to post-1989 forest land—certain activities of standard or permanent forestry in respect of post-1989 forest land  
187A EPA to give public notice of criteria for assessing risk of tree weed spread
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>188</td>
<td>Registration as participant in respect of post-1989 forest land in standard or permanent forestry</td>
</tr>
<tr>
<td>188A</td>
<td>Person ceases to be participant in respect of post-1989 forest land if natural event permanently prevents re-establishing forest on that land</td>
</tr>
<tr>
<td>189</td>
<td>Emissions returns for post-1989 forest land activities</td>
</tr>
<tr>
<td>190</td>
<td>Special rules regarding surrender of units in relation to post-1989 forest land</td>
</tr>
<tr>
<td>191</td>
<td>Ceasing to be registered as participant in respect of post-1989 forest land</td>
</tr>
<tr>
<td>188AA</td>
<td>Removing registration as participant in standard or permanent forestry</td>
</tr>
<tr>
<td>188AB</td>
<td>Removing registration as participant in standard or permanent forestry in certain natural events or clearance for forest management</td>
</tr>
<tr>
<td>188AC</td>
<td>Notice to forestry participant if their registration added or removed</td>
</tr>
<tr>
<td>188AD</td>
<td>Notice to interested party if forestry participant’s registration added or removed</td>
</tr>
<tr>
<td>189AA</td>
<td>Provisional forestry emissions return in any year</td>
</tr>
<tr>
<td>189AB</td>
<td>Final forestry emissions return at end of mandatory emissions return period</td>
</tr>
<tr>
<td>189BA</td>
<td>Preparing provisional or final forestry emissions return</td>
</tr>
<tr>
<td>189CA</td>
<td>Gross liability or entitlement for each CAA1 in emissions return</td>
</tr>
<tr>
<td>189CB</td>
<td>Net liability or entitlement for each CAA1 in final forestry emissions return</td>
</tr>
<tr>
<td>189CC</td>
<td>Unit balance calculation for each CAA1 in emissions return</td>
</tr>
<tr>
<td>189CD</td>
<td>Total liability or entitlement for all CAA1s in emissions return</td>
</tr>
<tr>
<td>189DA</td>
<td>Total liability or entitlement has effect, and unit balance updated, when emissions return submitted</td>
</tr>
<tr>
<td>189EA</td>
<td>New unit balance report</td>
</tr>
<tr>
<td>190</td>
<td>Maximum liability is unit balance of carbon accounting area</td>
</tr>
<tr>
<td>191AA</td>
<td>Ceasing participation for whole carbon accounting areas</td>
</tr>
<tr>
<td>191AB</td>
<td>Effect of ceasing participation for whole carbon accounting areas</td>
</tr>
<tr>
<td>191BA</td>
<td>Ceasing participation for part carbon accounting areas</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>-------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>191BB</td>
<td>Effect of ceasing participation for part carbon accounting areas</td>
</tr>
<tr>
<td>191CA</td>
<td>If participant has never carried out activity in carbon accounting area</td>
</tr>
<tr>
<td></td>
<td><strong>Transmission of interest relating to standard or permanent forestry</strong></td>
</tr>
<tr>
<td>192</td>
<td>Effect of transmission of interest in post-1989 forest land</td>
</tr>
<tr>
<td>193</td>
<td>Emissions returns in relation to transmitted interests</td>
</tr>
<tr>
<td>193</td>
<td>Effect of transmission of interest in post-1989 forest land</td>
</tr>
<tr>
<td></td>
<td><strong>Information about status of forest land</strong></td>
</tr>
<tr>
<td>194</td>
<td>Information about status of forest land</td>
</tr>
<tr>
<td></td>
<td><strong>Non-compliance for transmitted interests</strong></td>
</tr>
<tr>
<td>194AA</td>
<td>EPA may act if persons fail to give notice of transmitted interest</td>
</tr>
<tr>
<td></td>
<td><strong>Application to reconfigure carbon accounting areas for standard or permanent forestry</strong></td>
</tr>
<tr>
<td>194CA</td>
<td>Application to reconfigure carbon accounting areas for standard or permanent forestry</td>
</tr>
<tr>
<td>194CB</td>
<td>Criteria to reconfigure carbon accounting areas for standard or permanent forestry</td>
</tr>
<tr>
<td>194CC</td>
<td>Approval of application to reconfigure carbon accounting areas for standard or permanent forestry</td>
</tr>
<tr>
<td>194CD</td>
<td>Restriction start date of reconfigured carbon accounting area for permanent forestry</td>
</tr>
<tr>
<td></td>
<td><strong>Application to change activity on post-1989 forest land</strong></td>
</tr>
<tr>
<td>194DA</td>
<td>Application to change activity on post-1989 forest land</td>
</tr>
<tr>
<td>194DB</td>
<td>Criteria to change activity on post-1989 forest land</td>
</tr>
<tr>
<td>194DC</td>
<td>Approval of application to change activity on post-1989 forest land</td>
</tr>
<tr>
<td>194DD</td>
<td>Emissions return for application to change from PFSI activity</td>
</tr>
<tr>
<td>194DE</td>
<td>New unit balance report for application to change from PFSI activity</td>
</tr>
<tr>
<td>194DF</td>
<td>Liability to surrender units on transfer from permanent forestry to standard forestry in carbon accounting area (averaging)</td>
</tr>
<tr>
<td>194DG</td>
<td>Liability to surrender units on transfer from standard forestry in carbon accounting area (averaging) to permanent forestry</td>
</tr>
<tr>
<td></td>
<td><strong>Restrictions for permanent forestry land</strong></td>
</tr>
<tr>
<td>194EA</td>
<td>Permanent forestry period for land</td>
</tr>
<tr>
<td>194EB</td>
<td>Restriction on ceasing to be registered for permanent forestry</td>
</tr>
<tr>
<td>194EC</td>
<td>Minister may approve removal of land from permanent forestry</td>
</tr>
<tr>
<td>194ED</td>
<td>Exception from prohibition on clear-felling and deforestation</td>
</tr>
<tr>
<td>194EE</td>
<td>Permanent forestry land must not be clear-felled</td>
</tr>
<tr>
<td>194EF</td>
<td>Pecuniary penalty for clear-felling of permanent forestry land</td>
</tr>
<tr>
<td>194EG</td>
<td>Regulations for pecuniary penalty for clear-felling</td>
</tr>
</tbody>
</table>
Permanent forestry land must not be deforested 338
Pecuniary penalty for deforestation of permanent forestry land 338
Due dates for payment of penalties and recovery of EPA's costs 339
Option must be chosen at end of permanent forestry period 339
Removal of carbon accounting area from permanent forestry 340

Subpart 5—Averaging accounting methodology

General provisions

Interpretation for subpart 5 340
Averaging accounting methodology 341
Averaging accounting applies to carbon accounting areas (averaging) 342
First rotation forest and subsequent rotation forest 343

Carbon equivalent forest land swaps: applications

Application for carbon equivalent forest land swap 344
Criteria for carbon equivalent forest land swap 345
Effect of approval of application to swap land 346

Carbon equivalent forest land swaps: approved swap land

Duration of approved swap land status 347
Effect of being approved swap land 347
Subsequent rotation forest 348
Reconfiguration restrictions 348
No transfers to permanent forestry 348

Carbon equivalent forest land swaps: release of approved swap land

Release criteria 348
Notice of compliance with release criteria 349
Liability to surrender units if release criteria not met 351
Maximum liability and apportionment 352
Release date unit balance report 352
Effect on release date 353

Carbon equivalent forest land swaps: action if original criteria not met

EPA may take action if original criteria not met 354
Effect of declaration after release date 355
Remedial action: land substitution 355
Criteria for land substitution 356
Effect of land substitution 357

Regulations

Regulations for averaging 358
Subpart 6—Temporary adverse events

194MA Interpretation for subpart 6

Application

194NA Application for temporary adverse event suspension
194NB Criteria of temporary adverse event suspension
194NC Approval of temporary adverse event suspension

Temporary adverse event land

194PA Duration of temporary adverse event land status
194PB Effect of being temporary adverse event land
194PC No liability or entitlement
194PD First rotation forest
194PE Reconfiguration restrictions
194PF Damage to land turns out to be permanent

Re-establishment

194QA Re-establishment criteria
194QB Notice of achievement of re-establishment
194QC Effect on re-establishment date

Carbon recovery

194RA Carbon recovery criteria
194RB Notice when land achieves carbon recovery

Ceasing to be temporary adverse event land before recovery

194SA Cancellation for breach of conditions
194SB Other circumstances causing land to cease to be temporary adverse event land
194SC Consequences if land ceases to be temporary adverse event land

Regulations

194TA Regulations for temporary adverse events

Post-1989 forest land and pre-1990 forest land

Input returns before actual emissions returns

194UA Input returns may be submitted for certain emissions returns for forestry activities
194UB EPA may do calculations based on input return
194UC Regulations for input returns

Notification of status of forest land

195 Notification of status of forest land

Transitional provisions

196 First emissions return for pre-1990 forest land activities
196A Power to withdraw or suspend certain draft allocation plans 375
[Repealed]

197 First emissions return for post-1989 forest land activities 375

**Forestry classifications of land**

196A Meaning of forestry classification 375
196B EPA may give forestry classifications to areas of land 376
196C Effect of forestry classifications 376
196D Change of forestry classification to correct error 377
196E Change of forestry classification to update for changes 377
196F Forestry classification with effect before date classification given 377
196G Regulations for forestry classifications 378

**Grant-funded forests**

197 Entitlement to units for removals from grant-funded forests 379
197A Regulations for grant-funded forests 379

**Subpart 2—Liquid fossil fuels sector**

**Part 5A**

Sector-specific provisions: liquid fossil fuels

198 Registration as participant by purchasers of obligation fuel 380
199 Historical information sufficient to satisfy EPA 381
200 Effect of purchasing less than threshold level of obligation fuel 381
201 Effect of registration by purchasers of obligation fuel 381
202 Activities added to Part 2 of Schedule 3 381
202A Orders are confirmable instruments 382
203 Treatment of obligation fuels 383

**Subpart 3—Stationary energy sector**

**Part 5B**

Sector-specific provisions: stationary energy

204 Participant with respect to mining coal or natural gas 383
205 Mining natural gas in exclusive economic zone and continental shelf 384
206 Obligation with respect to combusting used oil, waste oil, and waste 384
207 Obligation with respect to mining coal 384
208 Purchase of coal or natural gas from certain related companies of Part 3 of Schedule 3 participant 385
209 Registration as participant by purchasers of coal or natural gas 385
210 Historical information sufficient to satisfy EPA 386
211 Effect of purchasing less than threshold level of coal or natural gas 387
211A Effect of stockpiling coal by coal importer or miner 387
212 Effect of registration by purchasers of coal or natural gas 388

**Subpart 4—Agriculture**
Part 5C
Sector-specific provisions: agriculture

213 Participant in respect of subpart 4 of Part 5 of Schedule 3
214 Units not required to be surrendered for fertilisers embedded in products
215 Effect of purchasing or farming less than threshold level [Repealed]
216 Effect of registration by farmers [Repealed]

Subpart 5—Transitional provisions

Part 5D
Sector-specific provisions: transitional provisions

217 Transitional provision for penalties
218 Transitional provision for voluntary reporting
219 Transitional provision for mandatory reporting by certain participants
220 Transitional provision relating to unit entitlements for subpart 1 or 3 of Part 2 of Schedule 4 participants
221 Additional transitional provisions for Part 3 of Schedule 4 participants
222 Transitional provisions regarding regulations that replace existing unit register regulations
222A Transitional provision for liability to surrender units to cover emissions from activities relating to liquid fossil fuels, stationary energy, and industrial processes [Repealed]
222B Transitional provision for entitlement to receive New Zealand units for removal activities [Repealed]
222C Transitional provision permitting payment of money instead of surrender of units to cover emissions [Repealed]
222D Issuing New Zealand units to meet surrender obligation [Repealed]
222E Transitional provisions relating to reporting [Repealed]
222F Transitional provision for allocation to industry [Repealed]
222G Transitional provision regarding prohibition on ability to export New Zealand units [Repealed]
222H Transitional provision for unincorporated bodies

Part 6
Targets

223 Establishment of Household Fund [Repealed]
224 Gazetting of targets [Repealed]
225 Regulations relating to targets [Repealed]
## Part 7

### Synthetic greenhouse gas levy

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>226</td>
<td>Overview of functions and responsibilities of EPA and agencies under this Part, Customs and Excise Act 2018, and Land Transport Act 1998</td>
</tr>
<tr>
<td>227</td>
<td>Synthetic greenhouse gas levy imposed</td>
</tr>
<tr>
<td>228</td>
<td>Person who registers leviable motor vehicle responsible for paying levy</td>
</tr>
<tr>
<td>229</td>
<td>Importer of leviable goods must pay levy</td>
</tr>
<tr>
<td>230</td>
<td>Levies are debt due to the Crown</td>
</tr>
<tr>
<td>231</td>
<td>Penalties for failure to pay levy [Repealed]</td>
</tr>
<tr>
<td>232</td>
<td>Application of provisions of Customs and Excise Act 2018</td>
</tr>
</tbody>
</table>

### Calculation of levy

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>233</td>
<td>Rate of synthetic greenhouse gas levy</td>
</tr>
<tr>
<td>234</td>
<td>Transitional provision for synthetic greenhouse gas levy [Repealed]</td>
</tr>
<tr>
<td>235</td>
<td>Temporary suspension of levy set by section 233 [Repealed]</td>
</tr>
<tr>
<td>236</td>
<td>Maximum price of carbon for purpose of levy calculation</td>
</tr>
<tr>
<td>237</td>
<td>Levy rate exclusive of GST</td>
</tr>
<tr>
<td>238</td>
<td>Levy rate for period from 1 July 2013 to 31 December 2013 [Repealed]</td>
</tr>
<tr>
<td>239</td>
<td>Levy rate to apply for single calendar year on and after 1 January 2014</td>
</tr>
</tbody>
</table>

### Levies to be paid into Crown Bank Account

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>240</td>
<td>Agencies to pay levy into Crown Bank Account</td>
</tr>
</tbody>
</table>

### Information

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>241</td>
<td>Agencies to provide information to EPA quarterly</td>
</tr>
<tr>
<td>242</td>
<td>Agencies and EPA to share information</td>
</tr>
<tr>
<td>243</td>
<td>Circumstances where levy may be refunded</td>
</tr>
<tr>
<td>244</td>
<td>Exemptions from payment of synthetic greenhouse gas levy</td>
</tr>
</tbody>
</table>

### Regulations

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>245</td>
<td>Regulations specifying levy rates</td>
</tr>
<tr>
<td>246</td>
<td>Regulations relating to synthetic greenhouse gas levy</td>
</tr>
<tr>
<td>247</td>
<td>Process for making orders and regulations</td>
</tr>
</tbody>
</table>

### Obligations of importers of leviable goods

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>248</td>
<td>Collecting information and keeping records</td>
</tr>
<tr>
<td>249</td>
<td>Application of section 88 (Directions to EPA)</td>
</tr>
<tr>
<td>250</td>
<td>EPA to publish information relating to levies</td>
</tr>
</tbody>
</table>
Subpart 3—Offences and penalties

Offences relating to synthetic greenhouse gas levy

259 Offence in relation to failure to collect data and keep records 409
260 Failure to provide information or documents 410
261 Other offences 410
262 Offence for breach of confidentiality 411
263 Evasion 411

Offence in relation to release of synthetic greenhouse gases

264 Offence in relation to release of synthetic greenhouse gases 411
265 Defence for release of synthetic greenhouse gas 412

Proceedings and liability

266 Limitation period for commencement of proceedings 412
267 Evidence in proceedings 412
268 Liability of body corporate, directors, managers of companies, companies, and persons for actions of directors, agents, and employees 413

Subpart 4—Other matters

269 Review of operation and effectiveness of levy 413
270 Appointment and conduct of independent panel 414

Schedule 1AA

Transitional, savings, and related provisions

Schedule 1AA

Transitional, savings, and related provisions

Schedule 1

United Nations Framework Convention on Climate Change

Schedule 2

Kyoto Protocol to the United Nations Framework Convention on Climate Change

Schedule 2A

Paris Agreement

Schedule 3

Activities with respect to which persons must be participants
Schedule 4

Activities with respect to which persons may be participants

1 Title
This Act is the Climate Change Response Act 2002.

Part 1
Preliminary provisions

2 Commencement
This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

2A Application of Schedules 3 and 4
(1) Any provision in this Act that imposes an obligation on, or provides an entitlement to, a person in respect of an activity listed in Schedule 3 or 4—
(a) does not apply to that person unless—
(i) the Part or subpart in Schedule 3 or 4 in which the activity is listed applies; and
(ii) the person, if carrying out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3, falls within a class of persons prescribed in an Order in Council that applies that subpart; and
(b) applies subject to sections 2C(3), 217 to 219, 178A, and 178B.

(2) Part 1 of Schedule 3 and Part 1 of Schedule 4 apply on and after 1 January 2008.

(2A) Part 3 of Schedule 4 applies on and after 1 July 2013.

(3) Subpart 1 of Part 2 of Schedule 3 and Part 4 of Schedule 4 apply on and after 1 January 2009.

(4) Subpart 1 of Part 3 of Schedule 3, subpart 1 of Part 4 of Schedule 3, and subpart 1 of Part 2 of Schedule 4 apply on and after 1 January 2010.

(5) Subpart 1 of Part 5 of Schedule 3 applies on and after 1 January 2011.

(6) Subpart 2 of Part 4 of Schedule 3, Part 6 of Schedule 3, and subpart 3 of Part 2 of Schedule 4 apply on and after 1 January 2011.
(7A) Part 1A of Schedule 3 applies on and after 1 January 2013.
(7B) Subpart 2 of Part 3 of Schedule 3 applies on and after 1 January 2014.
(8) Subpart 2 of Part 5 of Schedule 3 applies on and after a date appointed by the Governor-General by Order in Council.
(9) Subpart 4 of Part 5 of Schedule 3 applies on and after a date appointed by the Governor-General by Order in Council.
(9) Subpart 4 of Part 5 of Schedule 3 applies—
   (a) on and after 1 January 2024, except in relation to surrender obligations; and
   (b) on and after 1 January 2025 in relation to surrender obligations.
(10) [Repealed]
(11) [Repealed]
(12) [Repealed]
(13) [Repealed]
(14) Subpart 2 of Part 2 of Schedule 4 applies on and after a date to be appointed by the Governor-General by Order in Council.
(15) [Repealed]
(16) [Repealed]
(17) [Repealed]
(18) [Repealed]
(19) [Repealed]

Amendment note:
This clause is proposed to be amended further by Order in Council or on 1 January 2023 by clause 224 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

2B Orders in Council in relation to Part 5 of Schedule 3
(1) An Order in Council made under section 2A(8) or (9) appointing a date on and after which subpart 2 or 4 of Part 5 of Schedule 3 applies must—
   (a) be made on the recommendation of the Minister responsible for the administration of this Act; and
   (b) appoint a date that is 1 January in a year; and
   (c) be made at least 1 year before the date appointed in the Order in Council; and
   (d) not appoint a date earlier than 1 January 2013.
(2) One or more Orders in Council made under section 2A(8) or (9) may provide that subpart 2 or 4 of Part 5 of Schedule 3 applies—
(a) specifically to 1 or more classes of persons who carry out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 on and after a date appointed in the order; or

(b) generally to all persons who carry out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 on and after a date appointed in the order.

(3) Before recommending that an Order in Council be made under section 2A(8) or (9), 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 respect of an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 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 subpart 2 or 4 of Part 5 of Schedule 3 will reduce their emissions; and

(c) the desirability of minimising—

(i) the compliance and administration costs of persons who will become participants in respect of an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 by operation of the order; and

(ii) the administration costs of the Crown in administering the greenhouse gas emissions trading scheme established under this Act.

(4) Before recommending the making of an Order in Council under section 2A(8) or (9), the Minister must consult, or be satisfied that the chief executive has consulted, persons (or their representatives) that appear to the Minister or the chief executive likely to have an interest in the order.

2C Effect of Orders in Council in relation to Part 5 of Schedule 3

(1) This section applies if an Order in Council made under section 2A(8) or (9) has the effect that subparts 1 and 2 of Part 5 of Schedule 3, or subparts 3 and 4 of Part 5 of Schedule 3, apply at the same time.

(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 from 1 January 2024.

(2) If this section applies, then regulations made under section 163(1) may require—

(a) a person carrying out an activity listed in subpart 1 of Part 5 of Schedule 3 and a person carrying out an activity listed in subpart 2 of Part 5 of Schedule 3 to—
(i) collect data or other information relating to the same synthetic fertiliser; and

(ii) calculate emissions in respect of emissions relating to the same synthetic fertiliser; or

(b) a person carrying out an activity listed in subpart 3 of Part 5 of Schedule 3 and a person carrying out an activity listed in subpart 4 of Part 5 of Schedule 3 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 date from which the person carrying out an activity listed in subpart 2 of Part 5 of Schedule 3 is required to surrender units for emissions relating to the fertiliser, this Act no longer applies to the person carrying out the activity listed in subpart 1 of Part 5 of Schedule 3 in relation to the fertiliser; and

(b) on and after the date from which the person carrying out an activity listed in subpart 4 of Part 5 of Schedule 3 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 activity listed in subpart 3 of Part 5 of Schedule 3 in relation to those ruminant animals, pigs, horses, or poultry.

(4) If an Order in Council is made under—

(a) 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;

(b) section 2A(9) that has the effect of applying subpart 4 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(6) and subpart 3 of Part 5 of Schedule 3 expire and are repealed on the date from which all persons carrying out an activity listed in subpart 4 of Part 5 of Schedule 3 are liable to surrender units in respect of emissions from the activity.
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) Section 2A(6) and subpart 3 of Part 5 of Schedule 3 expire and are repealed on 1 January 2025.

(5) If, by operation of subsection (3)(a) or (b) or (4)(a) or (b), (4), or (4A), 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 subpart 1 or 3 of Part 5 of Schedule 3 is repealed, then—

(a) section 54(4) applies, with any necessary modifications, to any person who has ceased, by operation of the provision, 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.

3 Purpose

(1) The purpose of this Act is to—

(aa) provide a framework by which New Zealand can develop and implement clear and stable climate change policies that—

(i) contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels; and

(ii) allow New Zealand to prepare for, and adapt to, the effects of climate change:

(a) enable New Zealand to meet its international obligations under the Convention and the Protocol, the Protocol, and the Paris Agreement, including (but not limited to)—

(i) its obligation under Article 3.1 of the Protocol to retire Kyoto units equal to the number of tonnes of carbon dioxide equivalent of human-induced greenhouse gases emitted from the sources listed in Annex A of the Protocol in New Zealand in the first commitment period starting on 1 January 2008 and ending on 31 December 2012; and

(ii) its obligation to report to the Conference of the Parties via the Secretariat under Article 7 of the Protocol and Article 12 of the Convention—Article 12 of the Convention, Article 7 of the Protocol, and Article 13.7 of the Paris Agreement;

(b) provide for the implementation, operation, and administration of a greenhouse gas emissions trading scheme in New Zealand that supports and encourages global efforts to reduce the emission of greenhouse gases by—
(i) assisting New Zealand to meet its international obligations under the Convention and the Protocol, the Protocol, and the Paris Agreement; and

(ii) reducing New Zealand’s net emissions of those gases to below business-as-usual levels; and

(c) provide for the imposition, operation, and administration of a levy on specified synthetic greenhouse gases contained in motor vehicles and also another levy on other goods to support and encourage global efforts to reduce the emission of those gases by—

(i) assisting New Zealand to meet its international obligations under the Convention and the Protocol, the Protocol, and the Paris Agreement; and

(ii) reducing New Zealand’s net emissions of those gases to below business-as-usual levels.

(2) [Repealed]

(2) A person who exercises a power or discretion, or carries out a duty, under this Act must exercise that power or discretion, or carry out that duty, in a manner that is consistent with the purpose of this Act.

(3) For the purposes of this section, business-as-usual levels means the levels of New Zealand’s greenhouse gas emissions, estimated by the Minister or the EPA at any particular point in time, as if the greenhouse gas emissions trading scheme provided for under this Act had not been implemented.

3A Treaty of Waitangi (Te Tiriti o Waitangi)
In order to recognise and respect the Crown’s responsibility to give effect to the principles of the Treaty of Waitangi,—

(a) with respect to section 2B (which relates to Orders in Council in relation to Part 5 of Schedule 3), before recommending the making of an Order in Council under section 2A(8) or (9), 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 order;

(ab) with respect to section 5G (which relates to nominations for the Climate Change Commission), particular attention is required to seeking nominations from iwi and Māori representative organisations;

(ac) with respect to section 5H (which relates to appointments of members of the Commission), the Minister must, before recommending the appointment of a member to the Commission, have regard to the need for the Commission to have members who have technical and professional skills, experience, and expertise, and innovative approaches, relevant to the Treaty of Waitangi (Te Tiriti o Waitangi);
with respect to sections 5ZG and 5ZI (which require the Minister to prepare and publish an emissions reduction plan), the Minister must include in an emissions reduction plan a strategy to recognise and mitigate the impacts on iwi and Māori of reducing emissions and must ensure that iwi and Māori have been adequately consulted on the plan:

with respect to section 5ZS (which requires the Minister to prepare a national adaptation plan), the Minister must, in preparing a plan, take into account the economic, social, health, environmental, ecological, and cultural effects of climate change on iwi and Māori:

with respect to section 75 (which relates to consultation on a pre-1990 forest land allocation plan), before making a recommendation under section 72, 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 pre-1990 forest land allocation plan:

with respect to section 76 (which relates to consultation on a fishing allocation plan), before making a recommendation under section 74, 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 fishing allocation plan:

with respect to the following sections (which relate to powers to make regulations or Orders in Council), before recommending the making of a regulation or an order under those sections, 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 regulation or order:

(i) section 2B (Part 5 of Schedule 3);
(ii) section 30G(1)(b)(i), (c), (j), and (k) (Part 2—institutional arrangements):
(iii) section 30GA (auctions to sell New Zealand units);
(iv) section 30GB (overall limits and price controls for units);
(v) section 30GD (auction monitor);
(vi) section 30M (infringement notices);
(vii) section 30W(1)(a) (price of carbon);
(viii) section 50(2) and (3) (Part 3—inventory agency);
(ix) section 60 (exemptions in respect of activities listed in Schedule 3);
(x) section 60A (exemptions for participants in standard forestry or permanent forestry);
(xi) section 84A (phase-out rates):
(xii) section 161A (eligible industrial activities);
(xiii) section 161G (eligible agricultural activities);
(xiv) section 162 (adding further activity to Part 2 of Schedule 4);
(xv) section 163 (methodologies and verifiers);
(xvi) section 164 (unique emissions factors);
(xvii) section 185A (exemptions for deforestation of land with tree weeds);
(xviii) section 186F (pre-1990 offsetting forest land);
(xix) section 194EG (pecuniary penalty for clear-felling);
(xx) section 194LA (averaging);
(xxi) section 194TA (temporary adverse event suspensions);
(xxii) section 194UC (input returns);
(xxiii) section 196G (forestry classifications);
(xxiv) section 225 (targets);
(xxv) section 244 (exemptions from payment of synthetic greenhouse gas levy);
(xxvi) section 246(1)(a) to (e) (synthetic greenhouse gas levy);
(xxvii) section 258 (verifiers):

(d) with respect to section 161 (which relates to the appointment and conduct of a review panel),—

(i) if the Minister initiates a review under section 160(1) or 269(1) and appoints an independent panel under section 160(3) or 269(3), the Minister must ensure that the review panel has at least 1 member who, in the Minister’s opinion, has the appropriate knowledge, skill, and experience relating to the principles of the Treaty of Waitangi and tikanga Māori to conduct the review; and

(ii) the review panel must consult with the representatives of iwi and Māori that appear to the panel likely to have an interest in the review; and

(iii) the terms of reference for the review panel must incorporate reference to the principles of the Treaty of Waitangi:

(e) with respect to section 161G (which relates to regulation-making powers in relation to eligible agricultural activities), before recommending the making of a regulation under section 161G(1), 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 regulation;
(f) with respect to section 162 (which relates to regulations adding further activity to Part 2 of Schedule 4), before recommending the making of a regulation under section 162(1), 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 regulation:

(g) with respect to section 163 (which relates to regulations relating to methodologies and verifiers), before recommending the making of a regulation under section 163(1), 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 regulation:

(h) with respect to section 164 (which relates to regulations relating to unique emissions factors), before recommending the making of a regulation under section 164, 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 regulation:

(i) with respect to section 224 (which relates to the gazetting of targets), before the Minister may set, amend, or revoke a target, 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 target:

(j) with respect to section 225 (which relates to regulations relating to targets), before recommending the making of a regulation under section 225(1), 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 regulation.

4 Interpretation

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

**2050 target** means the emissions reduction target set in section 5Q

**account number** means a unique account number assigned to a holding account by the Registrar under section 15(1)(a) section 15(1)

**agency** means,—

(a) in relation to the motor vehicle levy, the Registrar of Motor Vehicles; and

(b) in relation to the goods levy, the chief executive of the New Zealand Customs Service

**allocate**, in relation to New Zealand units,—

(a) means the allocation or provisional allocation of New Zealand units; but
(b) does not include the transfer of New Zealand units

**allocation plan** means an allocation plan issued under section 70

**animal material** has the same meaning as in section 4(1) of the Animal Products Act 1999

**animal product** has the same meaning as in section 4(1) of the Animal Products Act 1999

**animal welfare export certificate** means an animal welfare export certificate issued under section 46 of the Animal Welfare Act 1999

**annual financial statements of the Government** has the meaning given in section 2(1) of the Public Finance Act 1989

**approved overseas unit** means a unit, other than a Kyoto unit,—

(a) issued by an overseas registry; and

(b) prescribed as a unit that may be transferred to accounts in the Registry

**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

**assigned amount unit** means a unit issued out of a Party’s initial assigned amount and designated as an assigned amount unit by—

(a) the Registry; or

(b) an overseas registry of a Party listed in Annex B of the Protocol

**associated person** has the meaning given to it by subsection (3)

**auction** means an auction to sell New Zealand units under section 6A

**Australian eligible industrial activity** means an activity that is, or is likely to be, specified as an emissions-intensive trade exposed activity in respect of which a person may be allocated emissions units under Australian law

**biogenic methane** means all methane greenhouse gases produced from the agriculture and waste sectors (as reported in the New Zealand Greenhouse Gas Inventory)

**cancel**, in relation to a unit, means the transfer of the unit to a cancellation account in the Registry with the effect specified in section 18CA(1)

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

(a) is defined by a person who is registered or has applied to register as a participant under section 57 in relation to an activity listed in Part 1 of Schedule 4; and

(b) meets any relevant criteria specified in regulations made under this Act; or

(c) is constituted as a carbon accounting area by operation of section 188(7)(b) or 192(3)(b)
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 by section 194FC(3)

carbon dioxide equivalent, in relation to a gas in Annex A of the Protocol, means the amount, in tonnes, of carbon dioxide that would produce the same global warming as the amount of that gas, calculated by multiplying the tonnes of that gas by its global warming potential (as determined under Article 5.3 of the Protocol, as if the commitment period were binding on New Zealand)

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

carbon equivalence, in relation to land that is the subject of an offsetting forest land application under section 186A, means that the offsetting forest land achieves, within the usual rotation period for forest species on the pre-1990 forest land, the same carbon stock as was contained in the pre-1990 forest land at the time of the clearing as determined in accordance with regulations made under section 186F

carry-over means the transfer of an assigned amount unit, certified emission reduction unit, or emission reduction unit from the relevant commitment period to a subsequent commitment period so that the unit remains capable of being transferred, retired, cancelled, or carried-over in that subsequent commitment period

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

chief executive means the chief executive of the department that is, with the authority of the Prime Minister, responsible for the administration of this Act

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
clear, in relation to a tree,—

(a) includes—

(i) 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

(ii) felling, burning, killing, uprooting, or destroying by a natural cause or event; but

(b) does not include pruning or thinning

clear,—

(a) in relation to a tree,—

(i) includes—

(A) to fell, harvest, burn, remove by mechanical means, spray with a herbicide intended to kill the tree, or undertake any other form of human activity that kills the tree; and

(B) to fell, burn, kill, uproot, or destroy by a natural cause or event; but

(ii) does not include to prune or thin; 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

Climate Change Commission and Commission mean the Climate Change Commission established under section 5A

Climate Change Commission means an independent body to be established by the Minister to advise the Minister on matters relating to reducing New Zealand’s emissions

coal has the same meaning as in section 2(1) of the Crown Minerals Act 1991

commitment-period reserve means a number of Kyoto units equal to the lesser of—

(a) 90% of the assigned amount units issued out of New Zealand’s initial assigned amount; or

(b) 5 times the number of tonnes of carbon dioxide equivalent of human-induced greenhouse gases emitted from the sources listed in Annex A of
the Protocol in the most recent year, as estimated by the most recent inventory of greenhouse gases that has been reported in accordance with Article 7 of the Protocol and reviewed in accordance with Article 8 of the Protocol.

**Conference of the Parties** means the Conference of the Parties to the Convention.

**consolidated group** means a consolidated group formed under section 150.

**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 188(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 188(3), the date of the notice given under section 188(6)(b)(ii); or

(c) for any other carbon accounting area, the date on which a person becomes a participant in an activity on the carbon accounting area under a provision of Part 5.

**Convention**—

(a) means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992, a copy of the English text of which is set out in Schedule 1; and

(b) includes any amendments made to the Convention that are, or will become, binding on New Zealand from time to time.

**conversion account** means an account in the Registry used for the purpose of converting New Zealand units into 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 section 18CA(5).

**Crown conservation contract** means a written agreement with the Crown (including a concession granted in accordance with Part 3B of the Conservation Act 1987) for the removal and storage of greenhouse gases on post-1989 forest land that is Crown land managed or administered under the Conservation Act 1987 or any of the Acts listed in Schedule 1 of that Act.

**Crown holding account**—

(a) means a holding account that is established and held by the Crown in accordance with a direction of the Minister of Finance under section 6; and

(b) does not include a holding account opened by any other person on behalf of the Crown under section 18A.

**Crown land** has the same meaning as in section 2(1) of the Crown Minerals Act 1991.
dairy processing, in relation to milk or colostrum, means the first occasion, other than at a farm dairy, on which the milk or colostrum is made subject to heat treatment, freezing, separation, concentration, filtering, blending, extraction of milk components, and the addition of other material, including (but not limited to) food, ingredients, additives, or processing aids as defined in the Food Standards Code.

deforest, in relation to forest land,—
(a) means to convert forest land to land that is not forest land; and
(b) includes clearing forest land, where section 179 applies.

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.

designated operational entity means an operational entity designated under Article 12(5) of the Protocol.

disposal facility means any facility, including a landfill,—
(a) at which waste is disposed; and
(b) at which the waste disposed includes waste from a household that is not entirely from construction, renovation, or demolition of a house; and
(c) that operates, at least in part, as a business to dispose of waste; but
(d) does not include a facility, or any part of a facility, at which waste is combusted for the purpose of generating electricity or industrial heat.

dispose, in relation to waste,—
(a) means—
(i) the final or more than short-term deposit of waste into or onto land set apart for that purpose; or
(ii) the incineration of waste by deliberately burning the waste to destroy it; but
(b) does not include any deposit of biosolids for rehabilitation or other beneficial purposes.

document means a document in any form whether or not signed or initialled or otherwise authenticated by its maker; and includes—
(a) any writing on any material;
(b) any information recorded or stored by means of any tape recorder, computer, or any other device; and any material subsequently derived from information so recorded or stored.
(c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

(d) any book, map, plan, graph, or drawing:

(e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced.

-elect, in relation to a sink activity under Article 3.4 of the Protocol, means that a Party has advised the Secretariat of its intention to report to the Secretariat on that activity for the purpose of compliance with that Party’s obligations under Article 3.1 of the Protocol.

-electrical switchgear means fittings for—

(a) controlling the distribution of electricity; or

(b) controlling or protecting electrical circuits and electrical equipment; or

(c) the transmission of electricity.

electricity switchgear

eligible activity means—

(a) an eligible agricultural activity; or

(b) an eligible industrial activity.

eligible agricultural activity means an activity or subclass of an activity listed in Part 5 of Schedule 3 in respect of which a person is required to surrender units for emissions under this Act.

eligible industrial activity means an activity that is specified as an eligible industrial activity in regulations made under section 161A.

eligible land means pre-1990 forest land (other than land that has been declared to be exempt land under section 183 or 184).

eligible person means a person who meets any requirements for receiving an allocation of New Zealand units specified in, as relevant,—

(a) section 80(1):

(b) section 85(1):

(c) any regulations made under this Act:

(d) an allocation plan

(d) the pre-1990 forest land allocation plan

emission reduction unit means a unit derived from a joint implementation project, issued by converting an assigned amount unit or removal unit, and designated as an emission reduction unit by—

(a) the Registry; or

(b) an overseas registry of a Party listed in Annex B of the Protocol.
emissions,—

(a) in relation to Parts 1A and 1B, means emissions of greenhouse gases; but

(b) in relation to an activity listed in Schedule 3 or 4, means carbon dioxide equivalent emissions of greenhouse gases from the activity

emissions budget means the quantity of emissions that will be permitted in each emissions budget period as a net amount of carbon dioxide equivalent

emissions budget period means a 5-year period for the years 2022 to 2050, as specified in section 5X(3) (except that the period 2022 to 2025 is a 4-year period)

emissions budget period means a 5-year period in the years 2022 to 2050 (except that the period 2022 to 2025 is a 4-year period)

emissions reduction plan means a plan for achieving an emissions budget prepared in accordance with sections 5ZG to 5ZI

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 section 186, 187, 189, 191, 192, or 193; and

(iv) an emissions return submitted under a provision of Part 5 or Schedule 1AA; and

(b) includes any emissions return submitted under section 65, 66, 118, 186, 187, 189, 191, 192, or 193 that shows nil liability

(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

entity, in relation to a group, means a reporting entity or a reporting entity's subsidiary, within the meaning of section 5 of the Financial Reporting Act 2013
Environmental Protection Authority or EPA means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011

ETS participant provisions means Parts 4 to 5D of this Act

executive board means the board established under Article 12(4) of the Protocol

exempt land—

(a) means pre-1990 forest land that has been declared to be exempt land—

(i) under section 183; or

(ii) under section 184 and in respect of which the conditions in section 184(6) have been met, but

(i) under section 183 or 183B; or

(ii) under section 184, 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 187(2)

exotic forest species means a forest species that is not an indigenous forest species

expire or expiry, in relation to a long-term certified emission reduction unit or a temporary certified emission reduction unit, means a unit that is no longer capable of being—

(a) transferred to any account other than the general cancellation account; or

(b) retired

export has a corresponding meaning to exportation in section 5(1) of the Customs and Excise Act 2018

farm dairy has the same meaning as in section 4(1) of the Animal Products Act 1999

financial year has the same meaning as in section 2(1) of the Public Finance Act 1989

first commitment period means the commitment period from 1 January 2008 to 31 December 2012 (inclusive)

fishing allocation plan means the allocation plan that provides for the matters specified in section 74

Food Standards Code has the same meaning as in section 4(1) of the Animal Products Act 1999
forest land—
(a) means an area of land of at least 1 hectare that has, or is likely to have, tree crown cover from forest species of more than 30% in each hectare; and
(b) includes an area of land that temporarily does not meet the requirements specified in paragraph (a) because of human intervention or natural causes but that is likely to revert to land that meets the requirements specified in paragraph (a); but
(c) does not include—
(i) a shelter belt of forest species, where the tree crown cover has, or is likely to have, an average width of less than 30 metres; or
(ii) an area of land where the forest species have, or are likely to have, a tree crown cover of an average width of less than 30 metres, unless the area is contiguous with land that meets the requirements specified in paragraph (a) or (b)

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

forest species means a tree species capable of reaching at least 5 metres in height at maturity in the place where it is located, but does not include tree species grown or managed primarily for the production of fruit or nut crops

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 or 1A of Schedule 4 (standard forestry or permanent forestry on post-1989 forest land)

forestry classification has the meaning given by section 196A

fugitive coal seam gas means gas released by the activity of mining coal as calculated in accordance with any regulations made under this Act

general cancellation account means an account in the Registry for the purpose of holding units on behalf of the Crown that are cancelled for any reason 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

goods means all kinds of movable property, including motor vehicles

goods levy means the synthetic greenhouse gas levy imposed by section 227(1)(b)

greenhouse gas means a gas listed in Annex A of the Protocol

greenhouse gas means—
(a) carbon dioxide (CO₂);
(b) methane (CH₄):
(c) nitrous oxide (N₂O);
(d) any hydrofluorocarbon;
(e) any perfluorocarbon;
(f) sulphur hexafluoride (SF₆)

gross emissions means New Zealand’s total emissions from the agriculture, energy, industrial processes and product use, and waste sectors (as reported in the New Zealand Greenhouse Gas Inventory)
group has the same meaning as in section 5 of the Financial Reporting Act 2013
holding account means an account in the Registry for the purpose of holding units that have not been retired, surrendered, converted, or cancelled
import has a corresponding meaning to importation in section 5(1) of the Customs and Excise Act 2018
importer has the same meaning as in section 5(1) of the Customs and Excise Act 2018
indigenous forest species means a forest species that occurs naturally in New Zealand or has arrived in New Zealand without human assistance
indirect greenhouse gas—
(a) means a gas that—
   (i) reacts with other gases to form a greenhouse gas; or
   (ii) changes the chemistry of the atmosphere in a way that increases the lifetime of other greenhouse gases; and
(b) includes, but is not limited to, carbon monoxide, nitrogen oxides, non-methane volatile organic compounds, and sulphur dioxide

industrial or trade premises means any premises used for any industrial or trade purposes, or any premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes; but does not include any production land

initial assigned amount means the allowance of emissions of greenhouse gas assigned to a Party listed in Annex B of the Protocol, measured in tonnes of carbon dioxide equivalent, and calculated under Articles 3.7 and 3.8 of the Protocol

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

international transaction log means an international log established and maintained by the Secretariat to confirm the validity of transactions, including
the issue and transfer of Kyoto units between registries and between accounts in the Registry

inventory agency means the chief executive

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

joint implementation project means 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

Kyoto units means all of the unit types specified in, or in accordance with, the Protocol (namely, assigned amount units, certified emission reduction units, emission reduction units, long-term certified emission reduction units, removal units, and temporary certified emission reduction units)

landowner,—

(a) in relation to Crown land, means the appropriate Minister (as that term is defined in section 2A of the Crown Minerals Act 1991); and

(b) in relation to land other than Crown land, means—

(i) the legal owner of a freehold estate in the land; or

(ii) if the land is Maori customary land (as defined in section 4 of Te Ture Whenua Maori Act 1993), the person or persons who have title to the land as determined under Te Ture Whenua Maori Act 1993; or

(iii) if the land is Maori freehold land (as defined in section 4 of Te Ture Whenua Maori Act 1993), the legal owner of the land

leviable goods means goods that contain a specified synthetic greenhouse gas, but does not include an air-conditioning system that is part of a motor vehicle

leviable motor vehicle means a motor vehicle that includes, as part of the motor vehicle, an air-conditioning system containing a specified synthetic greenhouse gas

levy year means the period of 12 months starting on 1 January and ending with the close of 31 December

local authority means a local authority within the meaning of the Local Government Act 2002

long-term certified emission reduction replacement account means an account in the Registry—

(a) for the purpose of—

(i) replacing long-term certified emission reduction units in that account or the retirement account, before they are due to expire,
with assigned amount units, certified emission reduction units, emission reduction units, or removal units; or

(ii) replacing long-term certified emission reduction units, no more than 30 days before they are due to expire as a result of a reversal of sinks or non-receipt of a certification report, with —

(A) assigned amount units, certified emission reduction units, emission reduction units, or removal units; or

(B) long-term certified emission reduction units from the same clean development mechanism project; and

(b) that is limited to the relevant commitment period

**long-term certified emission reduction unit** means a unit derived from a clean development mechanism project, issued by the CDM registry, and designated as a long-term certified emission reduction unit by the CDM registry

**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

**Maori land** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

**member**, in relation to an unincorporated body, means a partner, joint venturer, trustee, joint owner of land, or other member of the body

**merchantable timber** means timber from the stem of a tree more than 10 years old, other than—

(a) the stump; and

(b) wood that is decayed or grossly distorted; and

(c) wood that is less than 10 centimetres in diameter, excluding the bark

**mining** has the same meaning as in section 2(1) of the Crown Minerals Act 1991

**Minister** means the Minister who is, under the authority of any warrant or under the authority of the Prime Minister, responsible for the administration of this Act
motor vehicle has the same meaning as in section 2(1) of the Land Transport Act 1998

motor vehicle levy means the synthetic greenhouse gas levy imposed by section 227(1)(a)

natural gas means—
(a) all gaseous hydrocarbons produced from wells, including wet gas and residual gas remaining after the extraction of condensate from wet gas; and
(b) liquid hydrocarbons, other than condensate, extracted from wet gas and sold as natural gas liquids, for example, liquid petroleum gas; and
(c) coal seam gas

net accounting emissions means the total of gross emissions and emissions from land use, land-use change, and forestry (as reported in the New Zealand Greenhouse Gas Inventory), less—
(a) removals, including from land use, land-use change, and forestry (as reported in the New Zealand Greenhouse Gas Inventory); and
(b) offshore mitigation

New Zealand Greenhouse Gas Inventory means the annual inventory report under Articles 4 and 12 of the Convention and Article 7.1 of the Protocol, prepared in accordance with section 32(1)

New Zealand unit means a unit issued by the Registrar and designated as a New Zealand unit

nominated entity, in relation to a consolidated group, means an entity appointed under section 150(4)(b) or 152(3)(b) as the nominated entity of a consolidated group

offshore mitigation means emissions reductions and removals, or allowances from emissions trading schemes,—
(a) that originate from outside New Zealand; and
(b) that are expressed as a quantity of carbon dioxide equivalent; and
(c) that are robustly accounted for to ensure that, among other things, double counting is avoided; and

(d) that either—

(i) represent an actual additional, measurable, and verifiable reduction or removal of an amount of carbon dioxide equivalent; or

(ii) are an emissions trading scheme allowance that triggers the reduction of carbon dioxide equivalent

*operating,* in relation to a disposal facility, means being in control of the facility

*ordinary hours of business* means the hours of 8 am to 6 pm from Monday to Friday

*overseas registry* means—

(a) a registry of a Party listed in Annex B of the Protocol (other than New Zealand);

(b) the CDM registry

(c) any other prescribed registry

*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* means the agreement adopted in Paris on 12 December 2015, and includes any amendments that are, or will become, binding on New Zealand from time to time

*Paris Agreement*—

(a) means the Paris Agreement (under the Convention) 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

*participant* means a person who is a participant under section 54

*Party* means a Party to the Protocol

*performance,* in relation to ruminants and other farmed livestock, means the production statistics with respect to those animals, including, but not limited to, weight, milk production, lambing and calving percentage, and wool weight

*permanent forestry* has the meaning given by section 186K

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

(a) was not forest land on 31 December 1989; or

(b) was forest land on 31 December 1989 but was deforested in the period beginning on 1 January 1990 and ending on 31 December 2007; or

(c) was pre-1990 forest land, other than exempt land,—
(i) that was deforested on or after 1 January 2008; and

(ii) 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;

or

(ea) 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; or

(eb) 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;

or

(d) was exempt land—

(i) that has been deforested; and

(ii) 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)

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

(a) is one of the following:

(i) was not forest land on 31 December 1989;

(ii) 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) 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) 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) 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) 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) 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—

(a) means forest land—

(i) that was forest land on 31 December 1989; and

(ii) that remained as forest land on 31 December 2007 (taking into account subsection (5)); and

(iii) where the forest species on the forest land on 31 December 2007 consisted predominantly of exotic forest species; but

(b) does not include any forest land that met the definition in paragraph (a), but—

(i) 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) was declared to be exempt land, has been deforested, and 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 187(2)(b)

pre-1990 forest land allocation plan means an allocation plan that provides for the matters specified in section 72

pre-1990 forest land allocation plan means the allocation plan issued under section 70 in respect of pre-1990 forest land

pre-1990 offsetting forest land means offsetting forest land that the EPA has noted as pre-1990 offsetting forest land on the register under section 186D(3)

previous commitment period means a commitment period, including (but not limited to) the first commitment period, that—

(a) is specified or determined under the Protocol; and

(b) begins and ends before a subsequent commitment period

primary representative means an individual appointed by an account holder as a primary representative of the account holder in accordance with any regulations made under Part 2

production land means any land used for the production of primary products (including agricultural, pastoral, horticultural, and forestry products); but does not include any buildings
Protocol—

(a) means the Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997, a copy of the English text of which is set out in Schedule 2; and

(b) includes any amendments made to the Protocol that are, or will become, binding on New Zealand from time to time

provisional allocation means a provisional allocation made under section 81

public notice means a notice published in a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin, and made accessible via the Internet

publicly available, in relation to a document or information, means that the document or information is available at all reasonable times, free of charge, on an Internet site

recover, in relation to dispose,—

(a) means the extraction of materials or energy from waste for further use or processing; and

(b) includes making waste into compost

recycle, in relation to dispose, means the reprocessing of waste to produce new materials

registered,—

(a) in relation to a motor vehicle, has the same meaning as in section 2(1) of the Land Transport Act 1998; but

(b) otherwise means registered in accordance with this Act

registered forestry right means a forestry right registered under the Forestry Rights Registration Act 1983

registered lease,—

(a) in relation to a lease in respect of land registered under the Land Transfer Act 2017, means a lease registered under that Act:

(b) in relation to a lease in respect of land that is not registered under the Land Transfer Act 2017, means a lease registered under the Deeds Registration Act 1908

Registrar means the person appointed under section 11

Registrar of Motor Vehicles has the same meaning as Registrar in section 233(1) of the Land Transport Act 1998

Registry means the Registry established in New Zealand for the purpose set out in section 10
relevant commitment period means a commitment period that is specified or determined under the Protocol, and—
(a) in which a particular activity or transaction occurs; or
(b) to which an account or Kyoto unit is associated

removal activity means an activity that is listed in Part 1 or 2 of Schedule 4

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)

removal unit means a unit—
(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) an overseas registry of a Party listed in Annex B of the Protocol

removals, means—
(a) in relation to a removal activity, means carbon dioxide equivalent greenhouse gases that are, as a result of the removal activity,—
(i) removed from the atmosphere; or
(ii) not released into the atmosphere; or
(iii) a reduction from emissions reported in—
(A) New Zealand’s annual inventory report under section 32 as required under the Convention or Protocol for any year; or
(B) any emissions report from New Zealand under a successor international agreement; and
(b) in Part 1B and the definitions of net accounting emissions and offshore mitigation, means greenhouse gases that are removed from the atmosphere

retire, in relation to a Kyoto unit, means the transfer of that Kyoto unit to a retirement account in the Registry with the effect specified in section 18CA(2)

retirement account means an account in the Registry for the purpose of holding Kyoto units that the Minister of Finance has retired on behalf of the Crown

reuse, in relation to dispose, means the further use of waste in its existing form for the original purpose of the materials or products that constitute the waste or for a similar purpose

Secretariat means the Secretariat of the Convention
sink activity, in relation to greenhouse gas removals, means—
(a) an activity under Article 3.3 of the Protocol; or
(b) an elected activity under Article 3.4 of the Protocol

sink cancellation account means an account in the Registry for the purpose of holding units that the Minister of Finance has cancelled on behalf of the Crown as a result of sink activities resulting in a net source of emissions

solid biofuel means wood, wood waste, sulphate lyes, or charcoal

specified synthetic greenhouse gas means a hydrofluorocarbon or perfluorocarbon specified in regulations made under section 246(1)(a)

standard forestry has the meaning given by section 186K

subsequent commitment period means a commitment period that—
(a) is specified or determined under the Protocol; and
(b) begins and ends after a previous commitment period

supervisory committee means the committee established to supervise the verification of emission reduction units generated by project activities under Article 6 of the Protocol

surrender means the transfer of a unit to a surrender account in the Registry with the effect specified in section 18CA(3) or (4) section 18CA(2)

surrender account means an account in the Registry for the purpose of holding units that account holders have surrendered

synthetic greenhouse gas means—
(a) a hydrofluorocarbon; or
(b) a perfluorocarbon

synthetic greenhouse gas levy or levy means the levy imposed by section 227

temporary adverse event land has the meaning given in section 194MA(1)

temporary certified emission reduction replacement account means an account in the Registry—
(a) for the purpose of replacing temporary certified emission reduction units, before they are due to expire, with assigned amount units, certified emission reduction units, emission reduction units, removal units, or temporary certified emission reduction units that are due to expire in a subsequent commitment period; and
(b) that is limited to the relevant commitment period

temporary certified emission reduction unit means a unit derived from a clean development mechanism project issued by the CDM registry, and designated as a temporary certified emission reduction unit by the CDM registry

the Customs has the same meaning as Customs in section 5(1) of the Customs and Excise Act 2018
tree weed means a tree—a forest species that is defined or designated as—
(a) a pest in a pest management strategy under the Biosecurity Act 1993; or
(b) a tree weed in regulations made under this Act

tree weed spread means the spread of a tree weed by natural regeneration

unincorporated body—
(a) means an unincorporated body of persons; and
(b) includes (but is not limited to)—
   (i) a partnership, a joint venture, or the trustees of a trust; and
   (ii) if land, a lease, a forestry right, or a Crown conservation contract
        is not owned, held, or entered into by a partnership, joint venture,
        or the trustees of a trust, 3 or more joint—
        (A) landowners; or
        (B) leaseholders; or
        (C) holders of a registered forestry right; or
        (D) parties to a Crown conservation contract; but
(c) does not, unless they are partners, joint venturers, or trustees of a trust,
   include 2 joint—
   (i) landowners; or
   (ii) leaseholders; or
   (iii) holders of a registered forestry right; or
   (iv) parties to a Crown conservation contract

unit means a Kyoto unit, a New Zealand unit, or an approved overseas unit

unit means a New Zealand unit or an approved overseas unit

usual rotation period, in relation to a forest species on land that is the subject
of an offsetting forest land application under section 186A, means the usual
rotation period prescribed for a forest species in any regulations made under
this Act

waste means any thing that has been disposed of or discarded—
(a) including (but not limited to) any disposed of or discarded thing that is
defined by its composition or source (for example, organic waste, elec-
tronic waste, or construction and demolition waste); but
(b) excluding any solid biofuel combusted for the purposes of generating
electricity or industrial heat

year means a calendar year ending on 31 December.

(2) Terms and expressions used and not defined in this Act but defined in the Con-
vention or Protocol, the Protocol, or the Paris Agreement have, unless the con-
text otherwise requires, the same meaning as in the Convention, the Protocol, or the Paris Agreement.

(3) A person is an associated person in relation to 1 or more other persons if—
   (a) each person is a body corporate and each of the bodies corporate—
       (i) consist substantially of the same members or shareholders; or
       (ii) are under the control of the same persons; or
   (b) any of the bodies corporate—
       (i) has the power, directly or indirectly, to exercise, or control the exercise of, 25% or more of the voting power at a meeting of the other; or
       (ii) is able to appoint or control 25% or more of the governing body of the other.

(4) For the purposes of the definition of dispose, a deposit of waste is short-term if, not later than 6 months after the deposit (or any later time that the chief executive has agreed to in writing), the waste is—
   (a) reused or recycled; or
   (b) recovered; or
   (c) removed from the land for any other reason.

(5) Despite anything in this Act, a hectare of land is not to be treated as pre-1990 forest land if,—
   (a) on 1 January 2008, the land had—
       (i) no standing exotic forest species (dead or alive), other than a strip of standing exotic forest species that had, or was likely to have, tree crown cover of an average width of less than 30 metres; and
       (ii) no other merchantable timber from exotic forest species; and
   (b) 4 years after the date on which the land met the conditions in paragraph (a), it is not forest land and no allocation has been made in respect of the land under the pre-1990 forest land allocation plan.

(6) For the purposes of 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, a provision that relates to a participant who submits an emissions return that shows nil liability, activity or activities includes any thing that would have been an activity listed in Schedule 3 or 4 if it had been carried out as, or to the extent, described in Schedule 3 or 4 during the period reported on in the emissions return.

(7) For the purposes of the definition of landowner in relation to the activity listed in Part 1 of Schedule 3, 1 or more pieces of land (land A) and 1 or more pieces of other land (land B) that are owned by the same person are to be treated as if they were owned by different persons if—
(a) land A and land B are held under different trusts; and
(b) each trust has the same trustee or trustees; and
(c) the trustees hold land A and land B in their capacity as professional
trustees (as defined in section 183(7)).

4A 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 make a recommendation unless the Minister is satisfied that New Zealand has international climate change obligations in relation to the additional gas or gases.

4B Transitional, savings, and related provisions
The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

4A Transitional, savings, and related provisions
The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

5 Act binds the Crown
This Act binds the Crown.

Part 1A
Climate Change Commission
Subpart 1—Establishment and appointments

5A Climate Change Commission established
The Climate Change Commission is established.

5B Purposes of Commission
The purposes of the Commission are—
(a) to provide independent, expert advice to the Government on mitigating climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change; and
(b) to monitor and review the Government’s progress towards its emissions reduction and adaptation goals.
5C **Commission is Crown entity**


(2) The Crown Entities Act 2004 applies to, and in relation to, the Commission except to the extent that this Act expressly provides otherwise.

5D **Membership of Commission**

(1) The Commission consists of—

(a) a Chairperson;

(b) a Deputy Chairperson;

(c) 5 other members.

(2) The members of the Commission are a board for the purposes of the Crown Entities Act 2004.

5E **Process for appointment of members of Commission**

(1) The Minister may recommend to the Governor-General that a person be appointed a member of the Commission if—

(a) the person has been nominated by the nominating committee; and

(b) the Minister has had regard to the matters in section 5H; and

(c) the Minister has consulted representatives of all political parties in Parliament.

(2) The Minister may, at any time, recommend to the Governor-General that a current member of the Commission be appointed to the position of Chairperson or Deputy Chairperson of the Commission.

5F **Establishment and membership of nominating committee**

(1) The Minister must establish a committee to nominate candidates to the Minister for appointment as members of the Commission.

(2) The nominating committee must comprise—

(a) the Chairperson of the Commission; and

(b) 4 or more other people who, in the opinion of the Minister, have the relevant skills or experience to identify suitably qualified candidates.

(3) If the position of Chairperson is vacant, the nominating committee must comprise 5 or more people who, in the opinion of the Minister, have the relevant skills or experience to identify suitably qualified candidates.

5G **Role of nominating committee**

(1) On request of the Minister, the nominating committee must nominate 1 or more people who, in the opinion of the committee, are suitably qualified to be appointed to be members of the Commission.
Before nominating a person for appointment, the nominating committee must—

(a) publicly call for expressions of interest in being appointed; and

(b) consult any person or group who may have an interest in being a member of the Commission, including—

(i) iwi and Māori representative organisations; and

(ii) any person or group that the Minister has identified as having an interest.

5H Matters Minister must have regard to before recommending appointment of member of Commission

(1) Before recommending the appointment of a member of the Commission, the Minister must have regard to the need for the Commission to have members who, collectively, have—

(a) an understanding of climate change mitigation and adaptation, including the likely effects of any responses to climate change; and

(b) experience working in or with local and central government; and

(c) knowledge of the process by which public and regulatory policy is formed and given effect to; and

(d) technical and professional skills, experience, and expertise in, and an understanding of innovative approaches relevant to,—

(i) the environmental, ecological, social, economic, and distributional effects of climate change and climate change policy interventions; and

(ii) the Treaty of Waitangi (Te Tiriti o Waitangi) and te ao Māori (including tikanga Māori, te reo Māori, mātauranga Māori, and Māori economic activity); and

(iii) a range of sectors and industries, at regional and local levels.

(2) In this section,—

mātauranga Māori means traditional Māori knowledge

teo Māori means the Māori world

te reo Māori means the Māori language
	tikanga Māori means Māori custom and protocol.

5I Members’ term of office

In recommending the appointment of a member of the Commission, the Minister must recommend a term of office that ensures that no more than 2 members have their terms of office expire in any calendar year.
Subpart 2—Commission’s functions, duties, and powers

5J Commission’s functions
The functions of the Commission are—
(a) to review the 2050 target and, if necessary, recommend changes to the target (see sections 5R to 5T);
(b) to provide advice to the Minister to enable the preparation of emissions budgets (see section 5ZA);
(c) to recommend any necessary amendments to emissions budgets (see section 5ZE);
(d) to provide advice to the Minister about the quantity of emissions that may be banked or borrowed between 2 adjacent emissions budget periods (see section 5ZF);
(e) to provide advice to the Minister to enable the preparation of an emissions reduction plan (see section 5ZH);
(f) to monitor and report on progress towards meeting emissions budgets and the 2050 target (see sections 5ZJ to 5ZL);
(g) to prepare national climate change risk assessments (see section 5ZQ);
(h) to prepare reports on the implementation of the national adaptation plan (see section 5ZU);
(i) to provide other reports requested by the Minister (see section 5K).

5K Reports to Government
(1) The Minister may, at any time, request that the Commission prepare reports to the Government on matters related to reducing emissions of greenhouse gases and adapting to the effects of climate change.
(2) Before making a request, the Minister must consult the Commission about the terms of reference for the requested report, which may, without limitation, specify—
(a) the scope of the report; and
(b) requirements concerning consultation; and
(c) matters relating to the Commission working jointly with other agencies (including overseas agencies) concerned with the subject matter of the report; and
(d) the date by which the Commission must submit its report to the Minister.
(3) On receiving a request from the Minister, the Commission must,—
(a) as soon as practicable, make the terms of reference publicly available; and
(b) prepare a report in accordance with the terms of reference; and
provide the report to the Minister.

5L Tabling and publication of Commission’s reports

(1) This section applies in respect of a document (such as advice, a report, a recommendation, or an assessment) provided to the Minister by the Commission under this Act.

(2) The Minister must present a copy of the document to the House of Representatives by the later of—

(a) 10 working days after the document is provided to the Minister; and

(b) if Parliament is not in session during the 10 working days after the document is provided to the Minister, as soon as practicable after the commencement of the next session of Parliament.

(3) The Commission must make the document publicly available as soon as practicable after it is presented to the House of Representatives, but no later than 20 working days after providing it to the Minister (even if the document has not been presented to the House by that date).

5M Matters Commission must consider

In performing its functions and duties and exercising its powers under this Act, the Commission must consider, where relevant,—

(a) current available scientific knowledge; and

(b) existing technology and anticipated technological developments, including the costs and benefits of early adoption of these in New Zealand; and

(c) the likely economic effects; and

(d) social, cultural, environmental, and ecological circumstances, including differences between sectors and regions; and

(e) the distribution of benefits, costs, and risks between generations; and

(f) the Crown-Māori relationship, te ao Māori (as defined in section 5H(2)), and specific effects on iwi and Māori; and

(g) responses to climate change taken or planned by parties to the Paris Agreement or to the Convention.

5N Consultation

(1) In performing its functions and duties and exercising its powers under this Act, the Commission must—

(a) proactively engage with persons the Commission considers relevant to the functions, duties, and powers; and

(b) where the Commission considers it is necessary, provide for participation by the public.

(2) The Commission may—
(a) publish and invite submissions on discussion papers and draft reports; and

(b) undertake any other type of consultation that it considers necessary for the performance of its functions and duties under this Act.

5O Commission must act independently

(1) The Commission must act independently in performing its functions and duties and exercising its powers under this Act.

(2) However, the Minister may direct the Commission to have regard to Government policy for the purposes of the Commission—

(a) recommending unit supply settings of the New Zealand emissions trading scheme; and

(b) providing advice about New Zealand’s nationally determined contributions under the Paris Agreement (in a report requested under section 5K).

5P Obligation to maintain confidentiality

(1) The Commission must keep confidential all information that is disclosed to it under section 99(2)(b)(iiib).

(2) The Commission must not disclose the information, except—

(a) with the consent of the person to whom the information relates or of the person to whom the information is confidential; or

(b) to the extent that the information is already in the public domain; or

(c) for the purposes of, or in connection with, reporting requirements of the Public Finance Act 1989; or

(d) as provided under this Act or any other Act; or

(e) 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.

(3) A person who knowingly fails to comply with this section commits an offence under section 130.

Part 1B
Emission reduction

Subpart 1—2050 target

5Q Target for 2050

(1) The target for emissions reduction (the 2050 target) requires that—
(a) net accounting emissions of greenhouse gases in a calendar year, other than biogenic methane, are zero by the calendar year beginning on 1 January 2050 and for each subsequent calendar year; and

(b) emissions of biogenic methane in a calendar year—
   (i) are 10% less than 2017 emissions by the calendar year beginning on 1 January 2030; and
   (ii) are 24% to 47% less than 2017 emissions by the calendar year beginning on 1 January 2050 and for each subsequent calendar year.

(2) The 2050 target will be met if emissions reductions meet or exceed those required by the target.

(3) In this section, 2017 emissions means the emissions of biogenic methane for the calendar year beginning on 1 January 2017.

5R Review of inclusion of emissions from international shipping and aviation in 2050 target

The Commission must, no later than 31 December 2024, provide written advice to the Minister on whether the 2050 target should be amended to include emissions from international shipping and aviation (and, if so, how the target should be amended).

5S Other 2050 target reviews

(1) The Commission must review the 2050 target—
   (a) when preparing advice under section 5ZA on setting an emissions budget for an emissions budget period beginning on or after 2036; and
   (b) at any other time the Minister requests a review.

(2) The Commission must advise the Minister in writing of the outcome of any review, including any recommendations made in accordance with section 5T,—
   (a) at the same time as giving advice to the Minister on setting an emissions budget (in the case of a review required under subsection (1)(a)); or
   (b) as soon as practicable following completion of the review (in the case of a review requested by the Minister).

5T Recommendations to amend 2050 target

(1) As a result of a review under section 5S, the Commission may recommend a change to—
   (a) the time frame for achievement of the 2050 target (or part of the target):
   (b) the levels of emission reductions required by the 2050 target (or part of the target):
   (c) the greenhouse gases, emissions, and removals to which the 2050 target (or part of the target) applies:
(d) how the 2050 target (or part of the target) may be met, including limits on removals and offshore mitigation.

(2) The Commission may recommend a change to the 2050 target only if—

(a) significant change has occurred, or is likely to occur, since the commencement of this section to 1 or more of the following, as they relate to climate change:

(i) global action:
(ii) scientific understanding of climate change:
(iii) New Zealand’s economic or fiscal circumstances:
(iv) New Zealand’s obligations under relevant international agreements:
(v) technological developments:
(vi) distributional impacts:
(vii) equity implications (including generational equity):
(viii) the principal risks and uncertainties associated with emissions reductions and removals:
(ix) social, cultural, environmental, and ecological circumstances; and

(b) the Commission is satisfied that the significant change justifies the change to the target.

5U Government response to target review recommendations

(1) Within 12 months after receiving a recommendation to amend the 2050 target under section 5R or 5T, the Minister must advise the Commission in writing of the Government’s response.

(2) The response must include reasons for any departure from the Commission’s recommendation.

(3) The Minister must make the response publicly available and present a copy to the House of Representatives as soon as practicable, but no later than 10 working days after it has been provided to the Commission.

Subpart 2—Setting emissions budgets

5V Interpretation

In this subpart and subparts 3 and 4, unless the context otherwise requires,—

advice includes recommendations
banked has the meaning given in section 5ZF(1)
borrowed has the meaning given in section 5ZF(3).
5W Purpose of this subpart

The purpose of this subpart and subparts 3 and 4 is to require the Minister to set a series of emissions budgets—

(a) with a view to meeting the 2050 target and contributing to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels; and

(b) in a way that allows those budgets to be met domestically; and

(c) that provides greater predictability for all those affected, including households, businesses, and investors, by giving advance information on the emissions reductions and removals that will be required.

5X Duty of Minister to set emissions budgets and ensure they are met

(1) The Minister must set an emissions budget for each emissions budget period in accordance with this subpart.

(2) From 31 December 2021, there must be 3 consecutive emissions budgets, 1 current and 2 prospective, in place at any one time.

(3) An emissions budget must be set and notified in the Gazette under section 5ZD as follows:

(a) for the emissions budget period 2022 to 2025, by 31 December 2021:

(b) for the emissions budget period 2026 to 2030, by 31 December 2021:

(c) for the emissions budget period 2031 to 2035, by 31 December 2021:

(d) for the emissions budget period 2036 to 2040, by 31 December 2025:

(e) for the emissions budget period 2041 to 2045, by 31 December 2030:

(f) for the emissions budget period 2046 to 2050, by 31 December 2035:

(g) for any subsequent emissions budget period, by 31 December not less than 10 years before that emissions budget period commences.

(4) The Minister must ensure that the net accounting emissions do not exceed the emissions budget for the relevant emissions budget period.

5Y Contents of emissions budgets

(1) Each emissions budget must state the total emissions that will be permitted for the relevant emissions budget period, expressed as a net quantity of carbon dioxide equivalent.

(2) Each emissions budget must include all greenhouse gases.

5Z How emissions budgets are to be met

(1) Emissions budgets must be met, as far as possible, through domestic emissions reductions and domestic removals.

(2) However, offshore mitigation may be used if there has been a significant change of circumstance—
(a) that affects the considerations on which the relevant emissions budget was based; and
(b) that affects the ability to meet the relevant emissions budget domestically.

Subpart 3—Role of Commission to advise on emissions budgets

5ZA Commission to advise Minister

(1) The Commission must advise the Minister on the following matters relevant to setting an emissions budget:
   (a) the recommended quantity of emissions that will be permitted in each emissions budget period; and
   (b) the rules that will apply to measure progress towards meeting emissions budgets and the 2050 target; and
   (c) how the emissions budgets, and ultimately the 2050 target, may realistically be met, including by pricing and policy methods; and
   (d) the proportions of an emissions budget that will be met by domestic emissions reductions and domestic removals, and the amount by which emissions of each greenhouse gas should be reduced to meet the relevant emissions budget and the 2050 target; and
   (e) the appropriate limit on offshore mitigation that may be used to meet an emissions budget, and an explanation of the circumstances that justify the use of offshore mitigation (see section 5Z).

(2) In preparing advice for the Minister under subsection (1), the Commission must have regard to the matters set out in section 5ZC.

(3) Before the Commission provides advice to the Minister on an emissions budget, it must—
   (a) make the proposed advice publicly available and invite comments on that advice; and
   (b) allow adequate time and opportunity for any submissions to be received, heard, and considered by the Commission.

(4) The Commission must provide its advice to the Minister,—
   (a) in the case of the first 3 emissions budgets, not later than 1 February 2021:
   (b) in the case of all subsequent emissions budgets, at least 12 months before an emissions budget must be notified under section 5ZD (or at least 15 months before, if a general election is to take place in that year).

5ZB Minister’s response to Commission

(1) Before the Minister sets an emissions budget, the Minister must be satisfied that there has been adequate consultation.
(2) If the Minister is not satisfied that there has been adequate consultation, the Minister must—
   (a) make the proposed emissions budget publicly available; and
   (b) allow adequate time and opportunity for any submissions to be received, heard, and considered by the Minister.

(3) At the time when the Minister sets and notifies an emissions budget under section 5ZD in accordance with the dates set out in section 5X(3), the Minister must provide a written response that—
   (a) responds to the advice received from the Commission; and
   (b) includes a proposed emissions budget for the relevant emissions budget period; and
   (c) is presented to the House of Representatives and made publicly available.

(4) If the proposed emissions budget departs from the advice of the Commission, the Minister must—
   (a) decide whether it is necessary to further consult persons likely to have an interest in the emissions budget; and
   (b) explain the reasons for any departures from the Commission’s advice in the response provided under subsection (3).

5ZC Matters relevant to advising on, and setting, emissions budgets

(1) This section applies to—
   (a) the Commission, when it is preparing advice for the Minister under section 5ZA:
   (b) the Minister, when the Minister is determining an emissions budget.

(2) The Commission and the Minister must—
   (a) have particular regard to how the emissions budget and 2050 target may realistically be met, including consideration of—
      (i) the key opportunities for emissions reductions and removals in New Zealand; and
      (ii) the principal risks and uncertainties associated with emissions reductions and removals; and
   (b) have regard to the following matters:
      (i) the emission and removal of greenhouse gases projected for the emissions budget period:
      (ii) a broad range of domestic and international scientific advice:
      (iii) existing technology and anticipated technological developments, including the costs and benefits of early adoption of these in New Zealand:
(iv) the need for emissions budgets that are ambitious but likely to be technically and economically achievable;
(v) the results of public consultation on an emissions budget;
(vi) the likely impact of actions taken to achieve an emissions budget and the 2050 target, including on the ability to adapt to climate change;
(vii) the distribution of those impacts across the regions and communities of New Zealand, and from generation to generation;
(viii) economic circumstances and the likely impact of the Minister’s decision on taxation, public spending, and public borrowing;
(ix) the implications, or potential implications, of land-use change for communities;
(x) responses to climate change taken or planned by parties to the Paris Agreement or to the Convention;
(xi) New Zealand’s relevant obligations under international agreements.

5ZD Publication of emissions budgets

(1) Before an emissions budget is notified in the Gazette and presented to the House of Representatives, the Minister must consult the appropriate representative of each of the political parties represented in the House of Representatives.

(2) When an emissions budget has been finalised by the Minister in accordance with this subpart, the emissions budget must be—
   (a) notified in the Gazette, stating the date on which the emissions budget period commences and ends; and
   (b) presented by the Minister to the House of Representatives; and
   (c) made publicly available at the direction of the Minister.

(3) A Gazette notice published under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act.

Revision of emissions budgets

5ZE When emissions budgets may be revised

Notified emissions budgets

(1) The Commission may, when providing advice and recommendations on a future emissions budget under section 5ZA, recommend that any emissions budgets notified under section 5ZD be revised if, since the emissions budgets were originally set,
(a) there have been methodological improvements to the way that emissions are measured and reported; or
(b) 1 or more significant changes have affected the considerations listed in section 5ZC(2) on which an emissions budget was based.

(2) At any time the 2050 target is revised, the Commission may provide advice recommending that the relevant emissions budgets be revised to reflect the change in the 2050 target.

(3) An emissions budget notified under section 5ZD may be revised only if the Commission recommends the revision.

Minister’s determination

(4) After receiving advice from the Commission, the Minister must determine whether to revise an emissions budget.

(5) The Minister must—
(a) take into account—
   (i) the Commission’s advice; and
   (ii) the matters set out in section 5ZC(2); and
(b) follow the procedure set out in sections 5ZB and 5ZD.

(6) However, the Minister must not revise an emissions budget—
(a) after an emissions budget period has begun, unless the circumstances are exceptional; or
(b) after the end of the emissions budget period to which it relates; or
(c) in any way other than that required if any of the circumstances described in subsection (1) or (2) apply.

(7) If the Minister determines to revise an emissions budget, the Minister must present to the House of Representatives an explanation of the reasons for revising the original emissions budget, having regard to—
(a) the matters described in subsection (1)(a) and (b); and
(b) the prohibition on revising an emissions budget (see subsection (6)) and any exceptional circumstances that led to the Minister’s decision (see subsection (6)(a)).

Banking and borrowing

5ZF  Power to bank or borrow

Banking

(1) If the total emissions in an emissions budget period are lower than the emissions budget for that period, the excess reduction may be carried forward to the next emissions budget period (banked).
Banking provides that the emissions budget for the next emissions budget period will be increased by the amount carried forward.

*Borrowing*

If the total emissions in an emissions budget period are greater than the emissions budget for that emissions budget period, an amount from the next emissions budget may be carried back to the preceding emissions budget period *(borrowed)*.

Borrowing provides that the emissions budget for the next emissions budget period will be reduced by the amount carried back.

The amount carried back under subsection (3) must not exceed 1% of the emissions budget for the next emissions budget period.

The Minister must decide whether to bank or borrow, and must determine the extent to which banking or borrowing is permitted.

Before the Minister makes a decision under subsection (6),—

(a) the Commission must, in its report on an emissions budget period, provide advice on the quantity of emissions that may be banked or borrowed between 2 adjacent emissions budget periods; and

(b) the Minister must have regard to that advice.

**Emissions reduction plan to be prepared**

**5ZG Requirement for emissions reduction plan**

(1) The Minister must prepare and make publicly available a plan setting out the policies and strategies for meeting the next emissions budget, and may include policies and strategies for meeting emissions budgets that have been notified under section 5ZD in accordance with the dates set out in section 5X(3).

(2) The plan must be prepared and published—

(a) after the relevant emissions budget has been notified under section 5ZD; but

(b) before the commencement of the relevant emissions budget period.

(3) The plan must include—

(a) sector-specific policies to reduce emissions and increase removals; and

(b) a multi-sector strategy to meet emissions budgets and improve the ability of those sectors to adapt to the effects of climate change; and

(c) a strategy to mitigate the impacts that reducing emissions and increasing removals will have on employees and employers, regions, iwi and Māori, and wider communities, including the funding for any mitigation action; and

(d) any other policies or strategies that the Minister considers necessary.
5ZH Commission to advise on emissions reduction plans

(1) Not later than 24 months before the beginning of an emissions budget period, the Commission must provide to the Minister advice on the direction of the policy required in the emissions reduction plan for that emissions budget period.

(2) Despite subsection (1), the first advice must be given no later than 1 February 2021.

(3) In preparing its advice, the Commission must apply section 5ZC(2) as if it referred to preparing an emissions reduction plan.

5ZI Minister to prepare and make emissions reduction plan publicly available

(1) In preparing a plan and supporting policies and strategies for an emissions budget period, the Minister must—
   (a) consider the advice received from the Commission under section 5ZH for meeting emissions budgets; and
   (b) ensure that the consultation has been adequate, including with sector representatives, affected communities, and iwi and Māori, and undertake further consultation as the Minister considers necessary.

(2) Before the relevant emissions budget period commences, the Minister must publish in the Gazette the plan, policies, and strategies.

(3) The Minister may, at any time, amend the plan and supporting policies and strategies to maintain their currency,—
   (a) using the same process as required for preparing the plan; or
   (b) in the case of a minor or technical change, without repeating the process used for preparing the plan.

(4) The Minister must—
   (a) make an emissions reduction plan publicly available 12 months before the commencement of a budget period; and
   (b) present a copy of each emissions reduction plan to the House of Representatives.

Subpart 4—Monitoring

5ZJ Commission to monitor progress towards meeting emissions budgets

(1) The Commission must regularly monitor and report on progress towards meeting an emissions budget and the 2050 target in accordance with sections 5ZK and 5ZL (which relate to reporting requirements).

(2) The Commission must carry out its monitoring function in accordance with the rules referred to in section 5ZA(1)(b) (which relates to measuring progress towards meeting emissions budgets and the 2050 target).
5ZK Commission to report annually on results of monitoring

(1) The Commission must prepare an annual report that includes, for the most recent year of the emissions budget period for which data is available from the New Zealand Greenhouse Gas Inventory,—
   (a) measured emissions; and
   (b) measured removals.

(2) The report must also include—
   (a) the latest projections for current and future emissions and removals; and
   (b) an assessment of the adequacy of the emissions reduction plan and progress in its implementation, including any new opportunities to reduce emissions.

(3) Not later than 3 months after the publication of a New Zealand Greenhouse Gas Inventory report, the Commission must provide its annual report prepared under subsection (1) to the Minister.

(4) Not later than 3 months after receiving the Commission’s annual report under subsection (3), the Minister must present to the House of Representatives and make publicly available a report that—
   (a) sets out the Minister’s response to the Commission’s report and recommendations; and
   (b) describes the progress made in implementing the current emissions reduction plan; and
   (c) notes any amendments to that plan.

5ZL Commission to report at end of emissions budget period

(1) Not later than 2 years after the end of an emissions budget period, the Commission must prepare a report for the Minister evaluating the progress made in that emissions budget period towards meeting the emissions budget in the next emissions budget period, including—
   (a) an evaluation of how well the emissions reduction plan has contributed to that progress; and
   (b) recommendations on any banking and borrowing that would be appropriate; and
   (c) an assessment of the amount of offshore mitigation required to meet the emissions budget for the period to which the report relates, subject to the limit proposed by the Commission under section 5ZA(1)(e).

(2) The Minister must present a report to the House of Representatives setting out the Minister’s response to the Commission’s report—
   (a) not later than 3 months after receiving the Commission’s report; or
   (b) if Parliament is not in session, as soon as practicable after the commencement of the next session of Parliament.
The Minister’s response to the Commission’s report must—
(a) provide reasons for any failure to meet the relevant emissions budget and for any departures from the Commission’s recommendations; and
(b) be made publicly available.

Subpart 5—Effect of 2050 target and emissions budgets

5ZM Effect of failure to meet 2050 target and emissions budgets
(1) No remedy or relief is available for failure to meet the 2050 target or an emissions budget, and the 2050 target and emissions budgets are not enforceable in a court of law, except as set out in this section.
(2) If the 2050 target or an emissions budget is not met, a court may make a declaration to that effect, together with an award of costs.
(3) If a declaration is made and becomes final after all appeals or rights of appeal expire or are disposed of, the Minister must, as soon as practicable, present to the House of Representatives a document that—
(a) brings the declaration to the attention of the House of Representatives; and
(b) contains advice on the Government’s response to the declaration.

5ZN 2050 target and emissions budget are permissive considerations
If they think fit, a person or body may, in exercising or performing a public function, power, or duty conferred on that person or body by or under law, take into account—
(a) the 2050 target; or
(b) an emissions budget; or
(c) an emissions reduction plan.

5ZO Guidance for departments
(1) The responsible Minister may issue guidance for departments on how to take the 2050 target or an emissions budget into account in the performance of their functions, powers, and duties (or classes of those functions, powers, and duties).
(2) The responsible Minister must, as soon as practicable after issuing the guidance, make it publicly available.
Part 1C
Adaptation

National climate change risk assessment

5ZP National climate change risk assessment

(1) A national climate change risk assessment must—
   (a) assess the risks to New Zealand’s economy, society, environment, and ecology from the current and future effects of climate change; and
   (b) identify the most significant risks to New Zealand, based on the nature of the risks, their severity, and the need for co-ordinated steps to respond to those risks in the next 6-year period.

(2) Sections 5L and 5ZQ apply to all national climate change risk assessments except the first one.

(3) Section 5ZR applies to the first national climate change risk assessment.

5ZQ Preparation of national climate change risk assessment

(1) The Commission must, no later than 6 years after the date on which the most recent national climate change risk assessment was made publicly available,—
   (a) provide the next national climate change risk assessment to the Minister; and
   (b) make that assessment publicly available.

(2) At the same time as making a national climate change risk assessment publicly available (in compliance with subsection (1)(b) and section 5L(3)), the Commission must make any evidence commissioned to support its preparation publicly available.

(3) In preparing a national climate change risk assessment, the Commission must take into account the following:
   (a) economic, social, health, environmental, ecological, and cultural effects of climate change:
   (b) the distribution of the effects of climate change across society, taking particular account of vulnerable groups or sectors:
   (c) New Zealand’s relevant obligations under international agreements:
   (d) how the assessment aligns or links with any other relevant national risk assessments produced by central government entities:
   (e) current effects and likely future effects of climate change:
   (f) any information received as a result of requests made under section 5ZW:
   (g) scientific and technical advice.

(4) The Commission may also take into account—
(a) opportunities arising for New Zealand’s economy, society, and environment as a result of the effects of climate change; and
(b) any other factor that it thinks is relevant or appropriate.

5ZR Minister must prepare first national climate change risk assessment

(1) The Minister must, no later than 1 year after the commencement of this Part,—
(a) prepare the first national climate change risk assessment; and
(b) present the assessment to the House of Representatives; and
(c) make the assessment and any evidence commissioned to support its preparation publicly available.

(2) Section 5ZQ(3) and (4) applies with the necessary modifications for the purposes of this section.

National adaptation plan

5ZS National adaptation plan

(1) In response to each national climate change risk assessment, the Minister must prepare a national adaptation plan.

(2) A national adaptation plan must set out—
(a) the Government’s objectives for adapting to the effects of climate change; and
(b) the Government’s strategies, policies, and proposals for meeting those objectives; and
(c) the time frames for implementing the strategies, policies, and proposals; and
(d) how the matters in paragraphs (a) to (c) address the most significant risks identified in the most recent national climate change risk assessment; and
(e) the measures and indicators that will enable regular monitoring of and reporting on the implementation of the strategies, policies, and proposals.

(3) A national adaptation plan may include any other matter that the Minister considers relevant.

(4) In preparing a national adaptation plan, the Minister must take into account the following:
(a) economic, social, health, environmental, ecological, and cultural effects of climate change, including effects on iwi and Māori:
(b) the distribution of the effects of climate change across society, taking particular account of vulnerable groups or sectors:
(c) New Zealand’s relevant obligations under international agreements:
(d) any information received as a result of requests made under section 5ZW:
(e) any relevant advice or reports received from the Commission:
(f) the ability of communities or organisations to undertake adaptation action, including how any action may be funded:
(g) scientific and technical advice.

(5) The Minister may also take into account any other matter that the Minister thinks is relevant or appropriate.

(6) In preparing a national adaptation plan, the Minister must undertake public consultation on the draft plan.

5ZT National adaptation plan must be presented to Parliament and made publicly available

(1) The Minister must, no later than 2 years after the date on which the most recent national climate change risk assessment is made publicly available,—
   (a) present the national adaptation plan to the House of Representatives; and
   (b) make the national adaptation plan publicly available.

(2) The Minister may make minor or technical changes to a national adaptation plan and must make any new version publicly available (but need not present the new version to the House of Representatives).

Progress reports

5ZU Progress reports on national adaptation plan

(1) For each national adaptation plan, the Commission must provide the Minister with a progress report that evaluates the implementation of the adaptation plan and its effectiveness—
   (a) 2 years after the adaptation plan is made publicly available; and
   (b) 4 years after the adaptation plan is made publicly available; and
   (c) 6 years after the adaptation plan is made publicly available.

(2) Each progress report must include—
   (a) an assessment of the progress made towards implementing the strategies, policies, and proposals included in the plan; and
   (b) an assessment of the degree to which the objectives of the plan have been achieved and how well the plan responds to the most significant risks posed by climate change; and
   (c) an identification of any known barriers to the implementation and effectiveness of the current plan, including recommendations for how those barriers might be addressed or overcome in future; and
   (d) any other relevant matters required to support the report.
(3) The Commission is not required to provide the Minister with a progress report if the date for providing the report to the Minister under subsection (1) is more than 1 year after the date on which a subsequent adaptation plan is made publicly available.

5ZV Minister must respond to progress report
The Minister must, no later than 6 months after the date on which the Minister receives a progress report,—
(a) respond in writing to the progress report; and
(b) make the response publicly available and present it to the House of Representatives.

Power to request provision of information

5ZW Minister or Commission may request certain organisations to provide information on climate change adaptation
(1) The Minister or the Commission may, in writing, request that a reporting organisation provide all or any of the following information:
(a) a description of the organisation’s governance in relation to the risks of, and opportunities arising from, climate change:
(b) a description of the actual and potential effects of the risks and opportunities on the organisation’s business, strategy, and financial planning:
(c) a description of the processes that the organisation uses to identify, assess, and manage the risks:
(d) a description of the metrics and targets used to assess and manage the risks and opportunities, including, if relevant, time frames and progress:
(e) any matters specified in regulations.
(2) The reporting organisation must comply with a request made under subsection (1).
(3) The Minister must, as soon as practicable, provide the Commission with a copy of any information received in response to a request made by the Minister.
(4) The Commission must, as soon as practicable, provide the Minister with a copy of any information received in response to a request made by the Commission.
(5) The Minister and the Commission must not publicly disclose any information received in response to a request, unless disclosure of the information is necessary to enable the Minister or the Commission to perform a function or duty imposed by this Part.
(6) Subsection (5) does not apply in respect of information that is already in the public domain.
(7) Before publicly disclosing any information received in response to a request, the Minister or Commission must consult with the person to whom the information relates.

(8) For the purposes of this section and section 5ZX, the following are reporting organisations:

(a) the Public Service, as defined in section 27 of the State Sector Act 1988;
(b) local authorities, as defined in section 5(1) of the Local Government Act 2002;
(c) council-controlled organisations, as defined in section 6(1) of the Local Government Act 2002;
(d) Crown entities, as defined in section 7(1) of the Crown Entities Act 2004, but excluding school boards of trustees;
(e) companies listed in Schedule 4A of the Public Finance Act 1989;
(f) organisations listed in Schedule 1 of the State-Owned Enterprises Act 1986;
(g) lifeline utilities listed in Schedule 1 of the Civil Defence Emergency Management Act 2002;
(h) the New Zealand Police;
(i) the New Zealand Defence Force.

5ZX Regulations relating to requiring provision of information

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations specifying all or any of the following:

(a) requirements that relate to information that is provided in response to a request under section 5ZW(1), including different requirements for different sectors, classes of activity, or geographical areas;
(b) a date by which or time within which requested information must be provided to the Minister:
(c) ongoing or recurring reporting requirements (for example, requiring the provision of further information at regular intervals following a request):
(d) any administrative matters relating to responses to requests.

(2) In preparing the regulations, the Minister must consider—

(a) the ability to tailor a request to reflect the size and capability of the reporting organisation; and
(b) the potential extent and significance of climate change effects on the functions of the reporting organisation; and
(c) the avoidance of unnecessary duplication of information provided within existing reporting frameworks.
(3) Before recommending the making of the regulations, the Minister must consult the Commission and the reporting organisations that the Minister considers may be affected by the proposed regulations.

Part 2
Institutional arrangements

Subpart 1—Ministerial powers

6 Minister of Finance may direct Registrar regarding establishment of Crown holding accounts and carry out trading activities with respect to units

The Minister of Finance may, on behalf of the Crown,—

(a) direct the Registrar to establish or close Crown holding accounts:

(b) direct the Registrar to transfer units to any holding account in the Registry or to an overseas registry or international transaction body:

(c) buy or sell units, or otherwise acquire or dispose of units:

(d) enter into agreements to buy or sell units, or otherwise acquire or dispose of units, with any person (including any other Party):

(e) buy or sell, or enter into any agreement to buy or sell, or otherwise acquire or dispose of, any financial derivatives or other financial instruments relating to units or in connection with transactions relating to units:

(f) appoint agents to conduct the activities referred to in paragraphs (a) to (e) on the terms and conditions that the Minister of Finance thinks fit.

6A Minister’s power to sell by auction

If regulations are made under section 30G(1)(p) section 30GA, the Minister may, on behalf of the Crown,—

(a) sell New Zealand units by auction within a prescribed overall limit:

(b) appoint agents to conduct the sale on the terms and conditions that the Minister thinks fit.

7 Minister of Finance may give directions to Registrar regarding accounts and units

(1) The Minister of Finance may give directions to the Registrar to—

(a) establish the following accounts in the Registry for the Crown:

(i) a sink cancellation account:

(ii) a non-compliance cancellation account:

(iii) a general cancellation account:
(iv) a retirement account:

(v) a long-term certified emission reduction replacement account:

(vi) a temporary certified emission reduction replacement account:

(vii) a surrender account:

(viii) a conversion account:

(b) issue assigned amount units in the Registry:

(c) issue removal units or emission reduction units:

(d) transfer, subject to any prescribed restriction or prohibition, units (other than long-term certified emission reduction units or temporary certified emission reduction units) from holding accounts to the general cancellation account, the long-term certified emission reduction replacement account, the non-compliance cancellation account, the retirement account, the surrender account, the conversion account, the temporary certified emission reduction replacement account, or the sink cancellation account:

(da) transfer long-term certified emission reduction units or temporary certified emission reduction units from holding accounts to the general cancellation account, the long-term certified emission reduction replacement account, the temporary certified emission reduction replacement account, or the retirement account:

(db) transfer Kyoto units from the surrender account to a Crown holding account if the units are not required, at the time of the transfer, to meet—

(i) New Zealand’s international obligations; or

(ii) any equivalent domestic targets:

(e) carry over assigned amount units, certified emission reduction units, and emission reduction units held in holding accounts:

(b) transfer units between holding accounts, subject to any prescribed restriction or prohibition.

(2) Despite subsection (1), or any regulations made under this Act, the Minister of Finance may not give a direction to transfer units from an account held by an account holder other than the Crown to another account in the Registry, unless—

(a) the Minister of Finance has the written consent of the account holder; or

(b) if written consent is not given, the Minister of Finance gives the account holder reasonable notice and—

(i) the transfer is required to comply with New Zealand’s obligations under the Protocol; or

(ii) the transfer is required to comply with international climate change obligations; or
the account holder has failed to comply with Part 2 or any regulations made under section 30G; or

(c) section 30F(3) applies.

(3) For the purposes of subsection (2)(b)(i), reasonable notice means sufficient opportunity in the circumstances for the relevant account holder to make a written submission to the Minister of Finance on the transfer of the units before the units are transferred.

8 Registrar must give effect to directions of Minister of Finance

(1) The Registrar must give effect to any directions given by the Minister of Finance under section 6 or section 7 in accordance with, and subject to, the procedures set out in subpart 2 of this Part and regulations made under section 30G.

(2) To avoid doubt, the Crown Entities Act 2004 does not apply to a direction by the Minister of Finance to the Registrar.

8A Minister of Finance must publish directions

As soon as practicable after giving a direction under section 6 or 7, the Minister of Finance must publish a copy of the direction on the Registry’s Internet site.

9 Minister of Finance may obtain information from inventory agency and Registrar

For the purposes of managing the Crown’s holding of units and discharging New Zealand’s obligations under section 32(1)(b), the Minister of Finance may, as and when he or she thinks fit,—

(a) direct the inventory agency to provide information estimating New Zealand’s human-induced emissions of greenhouse gases by sources and removals by sink activities:

(b) direct the Registrar to provide information on those units, including, but not limited to, information indicating—

(i) how many units the Crown holds; and

(ii) how many units the Crown has issued or acquired, transferred, retired, replaced, cancelled, and carried over replaced, and cancelled.

Subpart 1A—Chief executive

9A Functions of chief executive

The functions of the chief executive are to—

(a) advise the Minister; and

(b) be the inventory agency; and
9B Delegation by chief executive

(1) The chief executive may delegate any of his or her functions, duties, and powers under this Act to the EPA.

(2) Section 41 of the State Sector Act 1988 applies to a delegation under this section as if the EPA were an employee of the chief executive.

Subpart 2—Registry

Purpose of Registry

10 Purpose of Registry

(1) The purpose of the Registry in relation to Kyoto units is to—

(a) ensure the accurate, transparent, and efficient accounting of—

(i) the issue, holding, transfer, retirement, surrender, and cancellation of Kyoto units; and

(ii) the carry-over of assigned amount units, certified emission reduction units, and emission reduction units; and

(iii) the replacement of expired long-term certified emission reduction units and expired temporary certified emission reduction units; and

(b) ensure, in accordance with Article 7.4 of the Protocol, the accurate, transparent, and efficient exchange of information between—

(i) the Registry and overseas registries; and

(ii) the Registry and the international transaction log.

(c) [Repealed]

(2) The purpose of the Registry in relation to New Zealand units and approved overseas units is to ensure—

(a) the accurate, transparent, and efficient accounting of—

(i) the issue of New Zealand units; and

(ii) the holding, transfer, surrender, and cancellation of New Zealand units and approved overseas units; and

(iii) the conversion of New Zealand units into assigned amount units; and

(b) the accurate, transparent, and efficient exchange of information between the Registry and overseas registries.

(3) The purpose of the Registry in relation to all units is to facilitate the exchange of information between those persons with functions, duties, and powers under
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.

Registrar

11 **EPA to appoint Registrar**

The EPA must appoint an employee of the EPA as the Registrar.

12 **Registrar responsible for Registry**

The Registrar is responsible for the operation, on behalf of the Crown, of the Registry.

13 **Registrar may refuse access to, or suspend operation of, Registry**

The Registrar may refuse access to the Registry, or otherwise suspend the operation of the Registry (in whole or in part),—

(a) for maintenance; or

(b) in response to technical difficulties; or

(c) to ensure the security or integrity of the Registry; or

(d) to give effect to New Zealand’s international obligations.

14 **Registrar must give effect to directions**

The Registrar must give effect to any direction relating to the transfer of units from a Crown holding account (or in the case of reimbursement, from a surrender account) to the holding account of an eligible person or a participant (or, if required, in the prescribed circumstances to another holding account notified by one of those persons) that is given by a Minister authorised to give such
directions in accordance with any provision in Part 4 or 5 of this Act or any of the ETS participant provisions or the EPA.

15 Registrar to allocate unique numbers

(1) The Registrar must, in accordance with regulations made under this Act, —

(a) allocate a unique account number to each account when the account is created; and

(b) allocate a unique serial number to —

(i) each assigned amount unit when the Registrar records the initial assigned amount; and

(ii) each removal unit when the Registrar issues the removal unit.

(1A) The Registrar may, subject to regulations made under this Part, allocate a unique serial number to —

(i) a New Zealand unit; or

(ii) an approved overseas unit; or

(iii) a class or subclass of New Zealand units; or

(iv) a class or subclass of approved overseas units.

(2) If the Minister of Finance directs the Registrar to issue emission reduction units under section 7, the Registrar must convert the assigned amount units or removal units specified by the Minister of Finance into emission reduction units by —

(a) giving the emission reduction units the serial numbers of the units from which the emission reduction units are being converted; and

(b) replacing the identifiers on the converted units with identifiers that designate that the converted units are emission reduction units.

16 Carry-over of certain Kyoto units

(1) An account holder may, subject to regulations made under this Act, apply to the Registrar to carry over assigned amount units, certified emission reduction units, or emission reduction units held in that account holder’s holding account.

(2) Long-term certified emission reduction units, removal units, and temporary certified emission reduction units may not be carried over.

17 Commitment period reserve

(1) Despite anything in this Act, the Registrar may not transfer or cancel Kyoto units if the transfer or cancellation would cause the total of the Kyoto units in all holding accounts and the retirement account in the unit register, excluding
those Kyoto units subject to a notification from the international transaction log under section 21(3), to fall below the commitment period reserve.

(2) This section does not apply to transfers or cancellations of Kyoto units that the Registrar has issued as emission reduction units that were verified by the supervisory committee.

### 17A Power of Registrar to delegate

(1) The Registrar may, in writing, delegate to any person who is employed by the EPA or in the State services all or any of the functions, duties, and powers exercisable by the Registrar under this Act, except this power of delegation.

(2) Subject to any general or special directions given or conditions specified at any time by the Registrar, the person to whom any functions, duties, or powers are delegated under this section must perform and may exercise those functions, duties, and powers in the same manner and with the same effect as if they had been conferred on that person directly by a section of this Act and not by delegation.

(3) Every person purporting to act under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

(4) Any delegation under this section may be to a specified person or to persons of a specified class, or may be to the holder or holders for the time being of a specified office or specified classes of offices.

(5) Every delegation under this section is revocable in writing at will by the Registrar, and no such delegation prevents the exercise of any function, duty, or power by the Registrar.

(6) Every delegation under this section, until revoked, continues in force according to its tenor, even if the Registrar by whom it was made has ceased to hold office.

(7) For the purposes of this section, State services has the same meaning as in section 2 of the State Sector Act 1988.

### 18 Form and content of unit register

(1) The Registry must have a unit register that is—

(a) in electronic form; and

(b) accessible via the Registry’s Internet site; and

(c) operated at all times, unless the Registrar suspends its operation (in whole or in part) under section 13 or as prescribed in regulations.

(2) The unit register must contain—
(a) a record of the holdings of units in holding accounts in New Zealand; and

(b) the particulars of transactions, including, but not limited to,
   (i) the issue, transfer, retirement, surrender, conversion, and cancellation of units; and
   (ii) the carry-over of assigned amount units, certified emission reduction units, and emission reduction units; and
   (iii) the replacement of long-term certified emission reduction units and temporary certified emission reduction units; and

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

(c) any other matters that are required to be registered under this Act or regulations made under this Act.

(3) A unit recorded in the unit register is—

(a) indivisible with respect to the issue, holding, transfer, retirement, replacement, surrender, carry-over, replacement, surrender, cancellation, and conversion of a unit within the unit register; and

(b) transferable, subject to any regulations made under this Act,—
   (i) within the unit register; or
   (ii) between the unit register and overseas registries or international transaction bodies.

18A Opening holding accounts

(1) Any person may submit an application to the Registrar to open 1 or more holding accounts in the unit register by using the form and paying the fees (if any) prescribed in regulations made under this Act.

(2) The Registrar may approve the opening of a holding account subject to any regulations made under this Act.

(3) If the Registrar approves an application to open a holding account, the Registrar must, as soon as practicable,—
   (a) open a holding account in the applicant’s name; and
   (b) provide the applicant with an account number.

(4) If the application is incomplete, the Registrar must, as soon as practicable, ask the applicant to provide the information or fee (if any) that is required to make the application complete.

(5) The Registrar may refuse to provide a holding account to any applicant who provides an incomplete application.

(6) A holding account is subject to any regulations made under this Act.
18B Closing holding accounts

(1) An account holder may submit a request to the Registrar to close 1 or more of that account holder’s holding accounts in the unit register by using the form and paying the fee (if any) prescribed in regulations made under this Act.

(2) The EPA may give a direction to the Registrar to close an account holder’s holding account—
   (a) if the EPA has the written consent of the account holder; or
   (b) where written consent is not given,—
       (i) if the EPA has given the account holder reasonable notice; and
       (ii) if—
           (A) the closure is required to comply with New Zealand’s obligations under the Protocol; or
           (B) the account holder has failed to comply with this Part or any regulations made regarding the matters specified in section 30G; or
           (C) the EPA is satisfied that the account holder no longer requires the account.

(3) If there are any units remaining in a holding account when it is closed,—
   (a) the units are forfeited to the Crown; and
   (b) the Registrar must, as soon as practicable, transfer the units to a Crown holding account.

(4) If a request is incomplete, the Registrar must, as soon as practicable, ask the account holder to provide the information or fee (if any) that is required to make the request complete.

(5) The Registrar may not close a holding account if the account holder provides an incomplete request.

(6) For the purposes of subsection (2)(b)(i), reasonable notice means sufficient opportunity in the circumstances to—
   (a) transfer the units to another account before the holding account that is the subject of the closure direction is closed; or
   (b) in the case of non-compliance, comply with this Part or any regulations made under section 30G; or
   (c) if the EPA is satisfied that an account holder no longer requires a holding account, make a written submission to the EPA, before the account is closed, regarding the account holder’s need to retain the account.

(7) The Registrar must give effect to any directions given by the EPA under subsection (2) in accordance with, and subject to, the procedures set out in this subpart and any regulations made under section 30G.
18C Transfer of units

(1) An account holder may, by using the form and paying the fees (if any) prescribed in regulations made under this Act, apply to the Registrar to transfer units from that account holder’s holding account to another account in—
   (a) the unit register; or
   (b) an overseas registry or international transaction body.

(2) The Registrar must transfer the specified units as requested, subject to any regulations made under this Act.

(3) Despite subsection (2), if the Registrar is asked to transfer Kyoto units held in an account holder’s holding account to a retirement account, the Registrar must—
   (a) seek a direction from the Minister of Finance as to whether the units may be transferred to a retirement account; and
   (b) transfer the units to a retirement account if the Minister of Finance so directs.

(4) An account holder who receives units is under no obligation to initiate any registration process.

18CA Effect of surrender, retirement, cancellation, and conversion and cancellation

(1) A unit that is transferred to a cancellation account may not be further transferred, retired, surrendered, carried over, surrendered, or cancelled.

(2) A Kyoto unit that is transferred to a retirement account may not be further transferred, retired, surrendered, carried over, or cancelled.

(3) A Kyoto unit that is transferred to a surrender account may only be further transferred, in accordance with—
   (a) a direction from the Minister of Finance, to—
      (i) a retirement account or a cancellation account; or
      (ii) a Crown holding account under section 7(1)(db); or
   (b) a direction of the EPA given under section 124, to a participant’s holding account.

(4) A New Zealand unit or an approved overseas unit that is transferred to a surrender account may only be further transferred in accordance with a direction of the EPA given under section 124.

(5) A New Zealand unit that is transferred to a conversion account may not be surrendered, cancelled, or otherwise further transferred except as required by section 30E(4)(b).

(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.
18CB  Restriction on surrender of assigned amount units

(1) No participant may surrender, or permit to be surrendered, an imported assigned amount unit to meet the participant’s obligations under section 63 unless the assigned amount unit meets the conditions or requirements prescribed in regulations made under this Part.

(2) In this section and section 18CD, 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.

18CC  Restriction on surrender of assigned amount units issued during first commitment period

(1) No participant may surrender, or permit to be surrendered, a CP1 imported assigned amount unit to meet the participant’s obligations under section 63 in respect of any emissions from any activities listed in Schedule 3 or 4 carried out by the participant after 31 December 2012.

(2) In this section and sections 18CD and 19, CP1 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, during the first commitment period.

18CD  Effect of surrendering restricted assigned amount units

(1) This section applies if at any time the Registrar discovers that—

(a) an imported assigned amount unit has been transferred to a surrender account that does not meet any of the conditions or requirements prescribed in regulations made under this Part; or

(b) a CP1 imported assigned amount unit has been transferred to a surrender account to meet a participant’s obligations under section 63 in respect of any emissions from any activities listed in Schedule 3 or 4 carried out by the participant after 31 December 2012.

(2) If this section applies, the Registrar must—

(a) reverse the transfer; and

(b) notify the participant and the EPA that the transfer has been reversed.

(3) If a transfer is reversed under subsection (2),—

(a) the EPA must treat the transfer as never taking 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 this 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)(a):
18D Succession

(1) This section applies if an account holder—
   (a) is a natural person and dies; or
   (b) is not a natural person and is wound up, liquidated, dissolved, or otherwise ceases to exist.

(2) If this section applies, the person listed on the holding account as the account holder’s representative may operate the holding account until—
   (a) a successor is determined; and
   (b) the Registrar is informed of that determination in writing.

(3) If a successor is determined, and the Registrar is informed of that determination in writing, the Registrar must register the successor as the account holder.

(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; and
   (c) the Registrar must comply with the EPA’s direction.

18E Trusts, representatives, and assignees of bankrupts

(1) Notice of a trust, whether express, implied, or constructive, may not be entered on the unit register except in accordance with subsection (1A).

(1A) If the trustees of a trust apply to open a holding account under section 18A, then—
   (a) the trustees may specify the name of the trust as the name of the holding account; and
   (b) the Registrar may enter on the unit register the name of the trust as the name of the holding account.

(2) Despite anything in section 18D, the existence of a representative that may operate the holding account of an account holder who has died, or that has been wound up, liquidated, or dissolved, or otherwise has ceased to exist, does not constitute notice of a trust.
19 Retirement of Kyoto units by the Crown

(1) The Crown may offset each tonne of carbon dioxide equivalent of human-induced greenhouse gas emissions, emitted from sources listed in Annex A of the Protocol, by transferring a Kyoto unit to the retirement account.

(2) Despite subsection (1), the Crown may not retire a CP1 imported assigned amount unit to offset any carbon dioxide equivalent of human-induced greenhouse gas emissions that are emitted after 31 December 2012 from sources listed in Annex A of the Protocol.

(3) New Zealand units and approved overseas units may not be retired.

20 Transactions must be registered

(1) A transaction to issue, transfer, cancel, retire, surrender, convert, or replace units must be registered on the unit register.

(2) However, the Registrar may not register a transaction on the unit register if—

(a) the Registrar receives a notification from the international transaction log or an international transaction body that there is a discrepancy with the transaction; or

(b) the transaction is not submitted in the prescribed form; or

(c) the prescribed fees (if any) have not been paid to the Registrar (unless arrangements for payment have been made in accordance with regulations made under this Act).

21 Registration procedure for Kyoto units

(1) On receipt of a direction in relation to Kyoto units given by the Minister authorised to give the direction under a provision of this Act or the EPA, or an application for the registration of a transaction in relation to Kyoto units by an account holder that is completed to the satisfaction of the Registrar and in accordance with any regulations made under this Act, the Registrar must—

(a) create a unique transaction number; and

(b) if the proposed transaction concerns the international transaction log, send a record of the proposed transaction to the international transaction log if required to do so by the international transaction log; and

(c) if the proposed transaction does not concern the international transaction log,—

(i) record in the unit register the particulars of the transaction set out in the direction or the application; and

(ii) send electronic notification that the transaction has been recorded in the unit register;—
(A) in the case of a direction, the Minister or the EPA who gave the direction and, if the direction specifies that Kyoto units are to be transferred to a holding account of an account holder other than the Crown, the account holder:

(B) in the case of an application, the account holder who submitted the application and the account holder specified in the application as the account holder to whose holding account Kyoto units are to be transferred.

(2) If the Registrar sends a record of the proposed transaction to the international transaction log under subsection (1)(b) and receives notification back from the international transaction log that there are no discrepancies in the transaction, the Registrar must, as soon as practicable,—

(a) record in the unit register the particulars of the transaction set out in the direction or the application; and

(b) send notification that the transaction has been recorded in the unit register to the international transaction log; and

(e) send electronic notification that the transaction has been recorded in the unit register to,—

(i) in the case of a direction, the Minister or the EPA who gave the direction; or

(ii) in the case of an application, the account holder.

(3) If the Registrar receives a notification from the international transaction log that there is a discrepancy in a transaction in relation to Kyoto units, the Registrar—

(a) may not register the transaction; and

(b) must terminate the transaction; and

(e) must give notification of the termination, as soon as practicable, to the international transaction log; and

(d) send electronic notification that the transaction has been terminated to,—

(i) in the case of a direction, the Minister or the EPA who gave the direction; or

(ii) in the case of an application, the account holder.

(4) This section does not apply to the carry-over of assigned amount units, certified emission reduction units, and emission reduction units.

21AA Registration procedure for New Zealand units and approved overseas units

(1) On receipt of a direction in relation to New Zealand units or approved overseas units given by a Minister authorised to give the direction under a provision of this Act or the EPA the EPA or a Minister authorised to give the direction under
this Act, or an application for the registration of a transaction in relation to New Zealand units or approved overseas units by an account holder, which is completed to the satisfaction of the Registrar and in accordance with any regulations made under this Act, the Registrar must—

(a) create a unique transaction number; and

(b) if the proposed transaction concerns an overseas registry, send a record of the proposed transaction to the overseas registry if required to do so by the overseas registry; and

(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

(c) if the proposed transaction does not concern an overseas registry or international transaction body,—

(i) record in the unit register the particulars of the transaction set out in the direction or the application; and

(ii) send electronic notification that the transaction has been recorded in the unit register to,—

(A) in the case of a direction, the Minister or the EPA who gave the direction and, if the direction specifies that New Zealand units or approved overseas units are to be transferred to the holding account of an account holder other than the Crown, the account holder:

(B) in the case of an application, the account holder who submitted the application and the account holder specified in the application as the account holder to whose holding account New Zealand units or approved overseas units are to be transferred.

(2) If the Registrar sends a record of the proposed transaction to an overseas registry or international transaction body under subsection (1)(b) and receives notification back from the overseas registry that there are no discrepancies in the transaction, the Registrar must, as soon as practicable,—

(a) record in the unit register the particulars of the transaction set out in the direction or the application; and

(b) send notification to the overseas registry or international transaction body that the transaction has been recorded in the unit register; and

(c) send electronic notification that the transaction has been recorded in the unit register to,—

(i) in the case of a direction, the Minister or the EPA who gave the direction: or

(ii) in the case of an application, the account holder.
If the Registrar receives a notification from the overseas registry or international transaction body that there is a discrepancy in a proposed transaction in relation to New Zealand units or approved overseas units, the Registrar—

(a) may not register the transaction; and

(b) must terminate the transaction; and

(c) must notify the overseas registry or international transaction body of the termination; and

(d) send electronic notification that the transaction has been terminated to,—

(i) in the case of a direction, the Minister or the EPA who gave the direction; or

(ii) in the case of an application, the account holder.

21A Electronic registration

A direction to the Registrar by the Minister or the EPA under a provision of this Act or an application by an account holder to register a transaction must be—

(a) made electronically in the prescribed form via the Registry’s Internet site, and contain the particulars specified in the form; and

(b) accompanied by the fee (if any) prescribed in regulations made under this Act; and

(c) made in accordance with regulations made under this Act.

21B Defective applications

(1) If an application is defective, the Registrar may—

(a) [Repealed]

(b) direct, in writing by electronic notification, the applicant to correct the defect within a specified period of time.

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

(2) If a direction to correct a defect is not complied with within the specified period of time, the Registrar may refuse to—

(a) proceed with the registration; or

(b) register the transaction.

(3) Any fees paid to the Registrar in relation to an uncorrected defective application are forfeited.

22 Transactions take effect when registered

(1) A transaction takes effect when it is registered.

(2) A transaction is registered when the Registrar—
(a) assigns a registration number, date, and time, and other information that may be required by this Act, to the transaction; and
(b) enters those particulars in the unit register.

23 Receiving Kyoto units from overseas registries

(1) If the Registrar receives notification from an overseas registry of a proposal to transfer Kyoto units to an account in the Registry, the Registrar must register the transaction:
   (a) [Repealed]
   (b) [Repealed]

(2) If the Registrar receives notification from an overseas registry of a proposal to transfer Kyoto units to an account in the Registry and receives notification from the international transaction log that there is a discrepancy, the Registrar—
   (a) may not register the transaction; and
   (b) must terminate the transaction; and
   (c) must notify the international transaction log of the termination.

(3) A transfer of Kyoto units from an overseas registry is subject to any regulations made under this Act.

(4) Subsection (1) is subject to subsection (2).

23A Receiving New Zealand units and approved overseas units from overseas registries

(1) If the Registrar receives notification from an overseas registry or international transaction body of a proposal to transfer New Zealand units or approved overseas units to an account in the Registry and the Registrar is satisfied that there is no discrepancy with the transaction, the Registrar must register the transaction in accordance with the notification.

(2) If the Registrar receives notification from an overseas registry or international transaction body of a proposal to transfer New Zealand units or approved overseas units to an account in the Registry and the Registrar is satisfied that there is a discrepancy with the transaction, the Registrar—
   (a) may not register the transaction; and
   (b) must terminate the transaction; and
   (c) must notify the overseas registry or international transaction body of the termination.

(3) A transfer of New Zealand units or approved overseas units from an overseas registry or international transaction body is subject to any regulations made under this Act.
24 Priority of registration

(1) A direction given to the Registrar by the Minister or the EPA under a provision of this Act or an application for the registration of a transaction by an account holder must, as soon as practicable, be processed in the chronological order in which it is received by the Registrar.

(2) A direction or an application is received by the Registrar when it is recorded as being downloaded into the computer maintained to operate the unit register.

(3) Subsection (1) applies to an application for the registration of a transaction only if the application is completed to the satisfaction of the Registrar and in accordance with any regulations made under this Act.

25 Correction of unit register

(1) If the unit register records a transaction inaccurately, and the inaccuracy is the result of an error or omission made by the Registrar when registering the transaction, then a request to correct the inaccuracy may be submitted by—

(a) the Minister or the EPA who gave the direction; or
(b) the account holder who applied to register the transaction.

(2) The request—

(a) may be made at any time; and
(b) must specify—

(i) the inaccuracy; and
(ii) the correction required; and
(c) must be in the form, and accompanied by the fees (if any), prescribed in regulations made under this Act.

(3) If the Registrar is satisfied that the unit register is inaccurate in any respect, the Registrar may—

(a) correct the unit register accordingly; and
(b) record on the unit register—

(i) the nature of the correction; and
(ii) the time that the correction was made; and
(c) give notification of the correction, as soon as practicable, to—

(i) any person whom the Registrar considers to be affected by the correction; and
(ii) the international transaction log (if required to do so); and
(ii) an international transaction body (if required to do so); and
(iii) an overseas registry (if required to do so).
26 Unit register must be open for search

(1) Except as provided in section 13, the unit register must be open at all times for searches by a person via the Registry’s Internet site.

(2) The Registrar is not required to make publicly available any information that is not listed in section 27.

27 Information accessible by search

(1) The following information must be accessible by a search of the unit register:

(a) the following up-to-date information for each account:
   (i) the name of the account holder; and
   (ii) the type of account; and
   (iii) the account number; and
   (iv) the full name, mailing address, telephone number, fax number, and email address of any primary representatives of the account holder; and

(b) a list of account holders; and

(c) the relevant commitment period of any—
   (i) general cancellation account or retirement account; and
   (ii) long-term certified emission reduction replacement account or temporary certified emission reduction replacement account; and

(d) 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

(e) any other information prescribed in regulations made under this Part.

(2) The following information must be made accessible by a search of the unit register, and be available by 31 January in each year, in a form that shows the relevant totals at the end of the previous year:

(a) the total holdings of Kyoto units in the Registry; and

(b) the total holdings of assigned amount units, emission reduction units, certified emission reduction units, long-term certified emission reduction units, temporary certified emission reduction units, and removal units in the Registry; and

(c) the total quantity of New Zealand units issued during that year under section 68 or 178B; and

(d) the total quantity of New Zealand units transferred for each removal activity during that year; and

(e) the total holdings of New Zealand units in the Registry; and

(f) the total holdings of approved overseas units in the Registry; and
(g) the total holdings of each type of approved overseas units in the Registry; and
(h) the total quantity of assigned amount units issued on the basis of New Zealand’s initial assigned amount during that year; and
(i) the total quantity of emission reduction units issued on the basis of a joint implementation project during that year; and
(j) the total quantity of each type of approved overseas units issued during that year; and

(j) the following information in relation to units transferred to the Registry from overseas registries into the Registry during that year:
  (i) the total quantity of units transferred; and
  (ii) the total quantity of each type of unit transferred; and
  (iii) the identity of the transferring overseas registries registry or body, including the total quantity of—
       (A) units transferred from each overseas registry registry or body; and
       (B) each type of unit transferred from each overseas registry registry or body; and

(k) the following information in relation to units transferred from the Registry to overseas registries out of the Registry during that year:
  (i) the total quantity of units transferred; and
  (ii) the total quantity of each type of unit transferred; and
  (iii) the identity of the acquiring overseas registries registry or body, including the total quantity of—
       (A) units transferred to each overseas registry registry or body; and
       (B) each type of unit transferred to each overseas registry registry or body; and

(l) the total quantity of units transferred between holding accounts in the Registry during that year; and
(m) the total quantity of each type of unit transferred between holding accounts in the Registry during that year; and
(n) the total quantity of removal units issued in relation to sink activities during that year; and
(o) the total quantity of Kyoto units transferred to the sink cancellation account during that year; and
(p) the total quantity of Kyoto units transferred to the non-compliance cancellation account during that year; and
the total quantity of approved overseas units transferred during that year to any sink cancellation account; and

the total quantity of approved overseas units transferred during that year to any non-compliance cancellation account; and

the total quantity of units transferred to each general cancellation account during that year; and

the total quantity of Kyoto units retired during that year; and

the total quantity of units surrendered during that year; and

the total quantity of each type of unit surrendered during that year; and

the following information in relation to New Zealand units transferred to the conversion account during that year:

(i) the total quantity of New Zealand units converted; and

(ii) the total quantity of New Zealand units converted for the purpose of transferring designated assigned amount units to—

   (A) an account in an overseas registry; or

   (B) the general cancellation account; and

the total quantity of assigned amount units, certified emission reduction units, and emission reduction units carried over from a previous commitment period during that year; and

the expiry date of each long-term certified emission reduction unit and each temporary certified emission reduction unit held in the Registry.

the total quantity of each type of unit into which New Zealand units are converted in accordance with regulations made under this Act.

The following information must be accessible by a search of the unit register in a form that shows the relevant totals at the beginning of the previous year:

(a) the total holdings of Kyoto units in each holding account in the Registry (including any holding account held by the Crown); and

(b) the total holdings of assigned amount units, emission reduction units, certified emission reduction units, long-term certified emission reduction units, temporary certified emission reduction units, and removal units in each holding account in the Registry (including any holding account held by the Crown).

(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.

Amendment note:
This clause is proposed to be amended further by Order in Council or on 1 January 2023 by clause 225 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

28 Search of unit register
A person may, by using the form and paying the fees (if any) prescribed by regulations made under this Act, search the unit register, and obtain a printed search result, in accordance with this Act and any regulations made under this Act.

29 Printed search result receivable as evidence
A printed search result, or a copy of a printed search result, that purports to be issued by the Registrar is receivable as evidence and is, in the absence of evidence to the contrary, proof of any matter recorded in the unit register, including (but not limited to)—
(a) the ownership of units; and
(b) the date and time of the registration of a transaction; and
(c) information that the Registry holds.

30 Recovery of fees
(1) A fee that is not paid in accordance with regulations made under this Part may be recovered from the person liable to pay the fees by the EPA in any court of competent jurisdiction.
(2) The EPA may enter into any agreement or arrangement, on any terms that the EPA thinks fit, with any person to collect, or assist in the collection of, any fees that are payable.

30A The Crown or Registrar not liable in relation to searches in certain cases
No action may be brought against the Crown or the Registrar for any loss or damage resulting from—
(a) an inaccuracy in a search of the unit register; or
(b) an inaccurate entry or omission in the unit register if the inaccuracy or omission arises from reasonable reliance on information received by the Registrar from—
(i) the international transaction log; or
(ii) an international transaction body; or
(iia) an overseas registry; or
(iib) a third party; or
(iii) an account holder.
Expiry of long-term certified emission reduction units and temporary certified emission reduction units

30B Expiry of long-term certified emission reduction units

(1) A long-term certified emission reduction unit expires at the end of the last crediting period for the clean development mechanism project to which it relates.

(2) A person who holds a long-term certified emission reduction unit in a retirement account or a long-term certified emission reduction replacement account must replace that unit before it expires by transferring one of the following units to the long-term certified emission reduction replacement account:
   (a) an assigned amount unit; or
   (b) a certified emission reduction unit; or
   (c) an emission reduction unit; or
   (d) a removal unit.

(3) Thirty days before a long-term certified emission reduction unit in a retirement account or a long-term certified emission reduction replacement account expires, the Registrar must notify in writing the person who holds that unit that it is due to expire and must be replaced.

(4) If a long-term certified emission reduction unit is not held in a retirement account or a long-term certified emission reduction replacement account, the Registrar must transfer that unit to the general cancellation account when that unit expires.

(5) If subsection (4) applies, then section 18C(3) does not apply.

30C Replacement of certain long-term certified emission reduction units

(1) A person who holds a long-term certified emission reduction unit must replace that unit in accordance with this section if the designated operating entity of the relevant clean development mechanism project—
   (a) provides a certification report that indicates a reversal of net anthropogenic greenhouse gas removals by sinks since the previous certification; or
   (b) does not provide a certification report.

(2) If subsection (1) applies,—
   (a) each identified long-term certified emission reduction unit, as notified by the executive board, must be replaced by one of the following units:
      (i) assigned amount units; or
      (ii) certified emission reduction units; or
      (iii) emission reduction units; or
      (iv) removal units; or
long-term certified emission reduction units from the same clean development mechanism project; and

(b) the Registrar must notify in writing the person who holds the affected long-term certified emission reduction unit.

(2) A person notified under subsection (2)(b) must replace the affected long-term certified emission reduction unit within 30 days of receiving the notice.

(4) Sections 354 to 361 of the Property Law Act 2007 apply, with all necessary modifications, to any notice required under subsection (2)(b).

30D Expiry of temporary certified emission reduction units

(1) A temporary certified emission reduction unit expires at the end of the subsequent commitment period that immediately follows the relevant commitment period.

(2) A person who holds a temporary certified emission reduction unit in a retirement account or a temporary certified emission reduction replacement account must replace that unit before it expires by transferring one of the following units to the temporary certified emission reduction replacement account:

(a) an assigned amount unit; or

(b) a certified emission reduction unit; or

(c) an emission reduction unit; or

(d) a removal unit; or

(e) a temporary certified emission reduction unit that is due to expire in a subsequent commitment period.

(3) Thirty days before a temporary certified emission reduction unit in a retirement account or a temporary certified emission reduction replacement account expires, the Registrar must notify in writing the person who holds that unit that it is due to expire and must be replaced.

(4) If a temporary certified emission reduction unit is not held in a retirement account or a temporary certified emission reduction replacement account, the Registrar must transfer that unit to the general cancellation account when that unit expires.

(5) If subsection (4) applies, then section 18C(3) does not apply.

Miscellaneous provisions

30E Conversion of New Zealand units into designated assigned amount units for sale overseas or cancellation

(1) An account holder may apply to the Registrar to convert a New Zealand unit held by that person into a designated assigned amount unit held for the purposes of transferring that assigned amount unit to—

(a) an account in an overseas registry; or
(b) the general cancellation account.

(2) An account holder who applies to convert any New Zealand units into designated assigned amount units for either purpose specified in subsection (1) 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 for the transfer of an equivalent number of designated assigned amount units (into which the account holder is converting the New Zealand units) to—
(i) an account in an overseas registry; or
(ii) the general cancellation account; and
(e) pay the prescribed fee (if any).

(3) Upon receipt of an application under subsection (2) 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 designated assigned amount units; and
(c) subject to section 21(3), register the transaction applied for under subsection (2)(b).

(3A) The Registrar’s obligations under subsection (3) apply only if, and to the extent that, there are sufficient designated assigned amount units to meet a request under subsection (2) to convert New Zealand units.

(4) If the Registrar receives notification from the international transaction log under section 21(3) that there are discrepancies in the transaction relating to the application submitted under subsection (2)(b), the Registrar must—
(a) comply with section 21(3); and
(b) reverse the transfers in subsection (3)(a) and (b).

(5) For the purposes of this section, designated assigned amount unit means an assigned amount unit that—
(a) was issued by the Registrar on the basis of New Zealand’s initial assigned amount; and
(b) is held by the Crown in a Crown holding account.

30F Restrictions on certain New Zealand units allocated to landowners of pre-1990 forest land

(1) This section applies to any New Zealand units transferred or to be transferred after 31 December 2012 in accordance with the pre-1990 forest land allocation plan issued under section 70.

(2) [Repealed]
(3) If the activity listed in Part 1 of Schedule 3 is repealed, the Minister of Finance may issue a direction to the Registrar under section 7 to transfer from any holding account to a cancellation account any New Zealand units to which this section applies.

30G Regulations relating to Part 2

(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 procedures and requirements relating to any powers of the Minister of Finance under subpart 1 of this Part:

(b) prescribing matters, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, or prohibitions, in respect of—

(i) the transfer of units, including (but not limited to)—

(A) the transfer of units from an account holder’s holding account to an account in an overseas registry or international transaction body:

(B) the transfer of units within the unit register:

(C) the transfer of units from an overseas registry or international transaction body:

(D) prohibitions on the transfer of units for the purposes of holding those units in an account in the Registry:

(ii) the opening or closing of holding accounts:

(iii) the registration of a successor as an account holder:

(c) prescribing matters in respect of the holding, surrender, conversion, and cancellation of units, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, procedures, or thresholds:

(d) prescribing matters in respect of the carry-over of assigned amount units, certified emission reduction units, and emission reduction units, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, procedures, or thresholds:

(e) prescribing procedures, requirements, and other matters in respect of the unit register and its operation, including, but not limited to, matters relating to—

(i) access to the unit register:

(ii) the location of the unit register:

(iii) the hours of access to the unit register:

(iv) the format of unique numbers to be used in the unit register:

(v) the allocation of unique serial numbers to New Zealand units and approved overseas units:
(vi) the exchange of data between—
   (A) the Registry and overseas registries:
   (B) the Registry and the international transaction log in an international transaction body:

(vii) the registration of transactions:

(viii) the form and content of the unit register:

(f) prescribing matters in respect of which fees are payable under this Part or regulations made under this Part, the amounts of those fees, and the procedures for payment:

(g) prescribing procedures, requirements, and other matters in respect of the form, use, and manner of obtaining electronic verification statements to confirm a registration:

(h) prescribing procedures, requirements, and other matters in respect of searching the unit register, including, but not limited to,—
   (i) the criteria by which a search may be conducted:
   (ii) the method of disclosure:
   (iii) the form of search results:
   (iv) the abbreviations, expansions, or symbols that may be used in search results:

(i) prescribing forms and notices for the purposes of this Part or regulations made under this Part:

(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:

(j) prescribing, for the purpose of the definition of overseas registry, overseas registries from which and to which units may be transferred to and or to which units may be transferred to or from accounts in the Registry:

(k) prescribing the units issued by an overseas registry or international transaction body that may be transferred to accounts in the Registry:

(l) prescribing procedures for transactions involving approved overseas units:

(m) prescribing matters in respect of the taking of possession of an emissions unit for the purposes of section 18(1A)(b) of the Personal Property Securities Act 1999:

(n) in respect of this Part, giving effect to the terms of the Convention and the Protocol—international climate change obligations, including any decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on,
made, or approved in accordance with the Convention or the Protocol international climate change obligations:

(o) providing for the matters that are contemplated by, or necessary for, giving full effect to this Part and for its due administration:

(p) prescribing matters relating to the powers of the Minister under section 6A to sell New Zealand units by auction, including—

(i) prescribing the date on which the sale of New Zealand units by auction commences:

(ii) providing for a pilot auction to be conducted in advance of the date from which sale by auction is to commence:

(iii) prescribing the persons or classes of persons eligible to participate in an auction of New Zealand units:

(iv) prescribing penalties for breaches of regulations made under this paragraph:

(v) prescribing an overall limit in the manner provided for by section 30GA(1):

(vi) providing for any other matters for the conduct of an auction that the Minister considers relevant to the effective conduct of the auction:

(q) enabling the Minister to specify 1 or more types of Kyoto unit into which an account holder may apply to convert a New Zealand unit under section 30E, if assigned amount units are not available in a Crown holding account.

(2) Regulations made under subsection (1) may be made in respect of different units, transactions, persons, classes of units, subclasses of units, classes of transactions, or classes of persons.

(3) Any regulation made under subsection (1)(b)(i) or (c) does not apply to the transfer of units that are held in an account in the Registry at the time that the regulation comes into force.

(3A) The amount of fees set under regulations made under subsection (1)(f) must not exceed the amount necessary to enable the recovery of the direct and indirect costs of the Registrar in performing his or her functions under this Part.

(4) Any regulations made under subsection (1) must be consistent with the Convention and the Protocol international climate change obligations.

Amendment note:
This section is proposed to be amended further on 30 November 2020 by clause 206 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.
30GA  Further provisions governing regulations made under section 30G(1)(p)

(1) If regulations are made under section 30G(1)(p),—

(a) the Minister must recommend to the Governor-General that those regulations prescribe the overall limit on the number of New Zealand units that may, in any year for a period of 5 years from the date prescribed in the regulations,—

(i) be allocated; and

(ii) be sold by auction; and

(iii) be provided under a negotiated greenhouse agreement; and

(b) the Minister must, on an annual basis, make a recommendation to the Governor-General that regulations be made that extend the application of the regulations for a further year.

(2) Before the Minister makes a recommendation to the Governor-General under subsection (1), the Minister must have regard to—

(a) the matters set out in section 68(2)(b)(i) to (iii) (with any necessary modifications); and

(b) New Zealand's projected emission trends; and

(c) any domestic target to reduce emissions; and

(d) the number of New Zealand units that are expected to be allocated; and

(e) the emissions to which the greenhouse gas emissions trading scheme applies; and

(f) the arrangements that govern the operation of the greenhouse gas emissions trading scheme; and

(g) the limit, if any, on the number of units that are not New Zealand units that a participant may surrender; and

(h) any other matters that the Minister considers relevant.

(3) Before making a recommendation under subsection (1)(a) to amend any regulations that prescribe the overall limit, the Minister must give notice in the Gazette of any proposal to amend the regulations not later than the date that is 1 year before the date when the amended regulations take effect.

(4) Any change to the overall limit prescribed by regulations made under section 30G(1)(p)(v) must not take effect in the same year as notice of that change is given under subsection (3).

(5) In prescribing an overall limit on the number of New Zealand units available, the regulations made under section 30G(1)(p)—

(a) must not prevent the number of New Zealand units that may be allocated from exceeding the prescribed overall limit; but
(b) must provide that no New Zealand units may be auctioned if the prescribed overall limit on the number of New Zealand units available is exceeded.

(6) In subsections (1)(a)(i) and (5)(a), the reference to New Zealand units allocated does not include—

(a) New Zealand units transferred in accordance with a determination of the Minister under section 77 or 78 that relates to an allocation under the pre-1990 forest land allocation plan; or

(b) any requirement for an additional allocation in the circumstances described in section 86C(5)(b).

(7) To avoid doubt, subsections (3) and (4) do not apply to regulations to which subsection (1)(b) applies.

30GB Further provisions governing regulations made under section 30G(1)(q)

(1) This section applies if regulations made under section 30G(1)(q) specify that a New Zealand unit may be converted into a type of Kyoto unit other than a designated assigned amount unit.

(2) The provisions of section 30E apply to a conversion to the type of Kyoto unit specified under those regulations as if a reference to a designated assigned amount unit or an assigned amount unit in that section were a reference to the type of Kyoto unit specified in the regulations.

(3) A reference to a designated assigned amount unit or an assigned amount unit in sections 27(2)(u)(ii) and 178C(1) must be read as a reference to the type of Kyoto unit specified in the regulations.

(4) Despite subsection (2), section 30E(5)(a) does not apply if this section applies.

30GA Regulations for auctions to sell New Zealand units

(1) The Governor-General may, by Order in Council, make regulations recommended by the Minister 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 published.

(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) 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 overall limits and price control settings for units

(1) The Governor-General may, by Order in Council, make regulations recommended by the Minister 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 an overall limit on the sum of the following for a calendar year:

(i) the number of New Zealand units sold by auction in that year (New Zealand units available by auction);

(ii) the number of New Zealand units that are allocated for eligible activities, or provided to participants under negotiated greenhouse agreements, in that year (New Zealand units available by other means);

(iii) the number of approved overseas units used by participants in that year by, for example, being transferred to holding accounts or being surrendered (approved overseas units available); and

(b) provide that the overall limit—

(i) restricts both the New Zealand units available by auction and the approved overseas units available, in that the following are prohibited to the extent that the overall limit would be exceeded:

(A) the sale of New Zealand units by auction;

(B) the use of approved overseas units by participants; but

(ii) does not restrict the New Zealand units available by other means, in that New Zealand units may be allocated for eligible activities,
or provided to participants under negotiated greenhouse agreements, even if the overall limit is 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 an overall limit 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 an overall limit 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 a new overall limit and new price control settings for each of the 2 calendar years before that further calendar year; and

(b) may recommend prescribing a new overall limit 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 overall limit 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.

Example

Regulations are first made under this section in December 2019. They must prescribe the overall limits and price control settings for the 5 (or 6) years from 2020 to 2024 (or 2025). In 2020, the regulations—

- must be amended to apply (or in how they apply) to 2025; and
- may be amended to prescribe new overall limits and price control settings for 2023 and 2024; and
- may be amended to prescribe new price control settings for 2021 or 2022.

30GC Requirements for regulations about overall 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 overall limits or price control settings; and

(b) considering under section 30GB(4)(a) whether to recommend prescribing new overall limits and price control settings for the 2 calendar years before a further calendar year.

(2) The Minister must be satisfied that the overall limits and price control settings are in accordance with—

(a) the relevant emissions budget; and

(b) the relevant nationally determined contribution for New Zealand under the Paris Agreement.

(3) However, they need not strictly accord with the budget or contribution 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

(c) the additional matters, but only in relation to the price control settings.
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) any recommendations of the Climate Change Commission that are made after an emissions budget is first set, including any desirable carbon price path (if available);

(f) any other matters that the Minister considers relevant.

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.

If the Minister makes a recommendation about prescribing overall limits or price control settings that differs from any recommendation of the Climate Change Commission described by subsection (5)(e), 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) publish the report.

If the Climate Change Commission exists and an emissions budget has been set,—

(a) the Minister must request the recommendations of the Commission for the purpose of subsection (5)(e); and

(b) the Commission’s recommendations must be made in accordance with the same requirements under section 30GB and this section that apply to the making of the Minister’s recommendations.
30GD Regulations for auction monitor

(1) The Governor-General may, by Order in Council, make regulations recommended by the Minister 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 (a 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
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 Procedure for certain regulations relating to units and auctions

(1) Before making a recommendation under section 30G(1) relating to regulations under section 30G(1)(b)(i), (e), (d), (j), (k), (p), or (q), the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulations made in accordance with the recommendation.

(1) Before recommending that regulations be made under section 30G(1)(b)(i), (c), (j), or (k), 30GA, 30GB, or 30GD, 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:

(a) the Minister or the chief executive; or
(b) for regulations made under section 30GB, the Minister, the chief executive, or the Climate Change Commission.

(2) The process for consultation must, to the extent practicable in the circumstances, include—

(a) giving adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and

(b) the provision of a reasonable opportunity for interested persons to consider the recommendation and make submissions; and

(c) adequate and appropriate consideration of submissions.

(3) Unless subsection (4) applies or a later date is specified in the regulations, regulations referred to in this section, except regulations made under section 30G(1)(q), come into force 3 months after the date of their notification in the Gazette.

(4) Subsections (1) and (3) do not apply in respect of any regulations if the Minister considers it is in the national interest that they be made urgently.

(5) A failure to comply with this section does not affect the validity of regulations made under section 30G(1)(b)(i), (e), (d), (j), (k), (p), or (q)—the provisions referred to in subsection (1).

30I Incorporation by reference in regulations made under section 30G

(1) The following written material may be incorporated by reference in regulations made under section 30G:

(a) decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved by any international or national organisation in accordance with the Convention or the Protocol—international climate change obligations; and

(b) any standards, requirements, or recommended practices—
(i) of any international or national organisation that are adopted, agreed on, made, or approved in accordance with the Convention or the Protocol international climate change obligations:

(ii) prescribed in any country or jurisdiction that are adopted, agreed on, made, or approved in accordance with the Convention or the Protocol international climate change obligations.

(2) Material may be incorporated by reference in regulations—

(a) in whole or in part; and

(b) with modifications, additions, or variations specified in the regulations.

(3) Material incorporated by reference in regulations has legal effect as part of the regulations.

(4) Sections 170 to 177 apply to material incorporated by reference into regulations under section 30G as though all references to sections 163 to 165, 167, and 168 a relevant empowering section were references to section 30G and all references to the chief executive were references to the Registrar.

30IA Minister must obtain emission reductions to match reserve amounts of units released

(1) This section applies if 1 or more reserve amounts of New Zealand units are released for sale at auction in a year.

(2) The Minister must ensure, or enter into agreements that require, that greenhouse gas emissions are reduced, or removals are increased, by 1 tonne for each New Zealand unit released as a reserve amount.

(3) The Minister must do so as soon as is reasonably practicable after the end of the emissions budget period that includes that year.

30J Signing false declaration with respect to regulations made under section 30G or 30GA

Every person who signs a declaration that is required under regulations made under section 30G or 30GA, knowing the declaration to be false,—

(a) commits an offence; and

(b) is liable on conviction to a fine not exceeding $5,000.

30K Providing false or misleading information to Registrar

(1) Every person who knowingly provides false or misleading information to the Registrar commits an offence and is liable on conviction to a fine not exceeding $5,000.

(a) in the case of an individual, $50,000:

(b) in the case of a body corporate, $200,000.
(2) Every person who recklessly provides false or misleading information to the Registrar commits an offence, and is liable on conviction to a fine not exceeding $2,000.

Subpart 3—Infringement offences

30L Meaning of infringement offence and infringement fee

In this subpart,—

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

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

30M Regulations about infringement offences

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) specifying the offences in this Act or regulations made under this Act that are infringement offences;

(b) for an offence in this Act or the regulations, defining a class of only some of those offences and specifying the class as an infringement offence;

(c) prescribing, for an infringement offence, an infringement fee not exceeding—

(i) $1,000 for a person other than a body corporate;

(ii) $2,000 for a body corporate;

(d) prescribing those infringement fees as different amounts for a first, second, or subsequent infringement offence;

(e) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

30N Procedure for regulations about infringement offences

(1) Before recommending that regulations be made under section 30M, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulations made in accordance with the recommendation.

(2) The process for consultation must include—

(a) adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and

(b) a reasonable opportunity for interested persons to consider the recommendation and make submissions; and
(c) adequate and appropriate consideration of submissions.

(3) Regulations made under this section come into force 3 months after the date of their notification in the Gazette, or on any later date that may be set out in the regulations.

(4) A failure to comply with this section does not affect the validity of regulations made under section 30M.

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.
Part 2 s 30S

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.

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 making a recommendation, 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) Before recommending the making of regulations under subsection (1)(a), the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulations made in accordance with the recommendation.

(4) The process for consultation must include—

(a) giving adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and
(b) providing a reasonable opportunity for interested persons to consider the recommendation and make submissions; and

c) giving adequate and appropriate consideration to submissions.

(5) Regulations made under subsection (1)(a) may not come into force earlier than 3 months after the date of their notification in the Gazette.

(6) A failure to comply with subsection (4) does not affect the validity of regulations made under this section.

Part 3

Inventory agency

31 Meaning of greenhouse gas

For the purposes of this subpart, despite anything in section 4, greenhouse gas means a gas in the earth’s atmosphere that strongly absorbs and re-emits infrared radiation, and includes indirect greenhouse gases, but does not include a gas that is covered by the Montreal Protocol on Substances that Deplete the Ozone Layer.

32 Primary functions of inventory agency

(1) The primary functions of the inventory agency are to—

(a) estimate annually New Zealand’s human-induced emissions by sources and removals by sinks of greenhouse gases; and

(b) prepare the following reports for the purpose of discharging New Zealand’s obligations:

(i) New Zealand’s annual inventory report under Articles 4 and 12 of the Convention and Article 7.1 of the Protocol, including (but not limited to) the quantities of long-term certified emission reduction units and temporary certified emission reduction units that have expired or have been replaced, retired, or cancelled; and

(ii) New Zealand’s national inventory report under Article 13.7 of the Paris Agreement; and

(ii) New Zealand’s national communication (or periodic report) under Article 7.2 of the Protocol and Article 12 of the Convention.

(iii) New Zealand’s report for the calculation of its initial assigned amount under Article 7.4 of the Protocol, including its method of calculation.

(2) In carrying out its functions, the inventory agency must—

(a) identify source categories; and

(b) collect data by means of—

(i) voluntary collection; and
(ii) collection from government agencies and other agencies that hold relevant information; and

(iii) collection in accordance with regulations made under this Part (if any); and

c) estimate the emissions and removals by sinks for each source category; and

d) undertake assessments on uncertainties; and

e) undertake procedures to verify the data; and

f) retain information and documents to show how the estimates were determined.

33 **Inventory agency under direction of Minister**

(1) The inventory agency must comply with any direction from the Minister in relation to the performance of its functions under this Part.

(2) As soon as practicable after giving the direction, the Minister must make a copy of the direction accessible via the inventory agency’s Internet site.

34 **Record keeping**

The inventory agency must keep a record of changes that occur from year to year in—

(a) the collection of data; and

(b) the use of methodologies and emission factors.

35 **Publication**

The inventory agency must publish New Zealand’s annual inventory report and its national communication (or periodic report) in electronic form by placing the report, national inventory report, and national communication (or periodic report) in electronic form by placing the reports on a publicly accessible portion of the inventory agency’s Internet site.

**Inspectors**

36 **Authorisation of inspectors**

(1) The Minister may authorise the following persons, provided that they are suitably qualified and trained, to exercise any or all of the powers of, and carry out any or all of the duties of an inspector under this Part:

(a) employees of the inventory agency; or

(b) employees of the Ministry for Primary Industries and employees of any other department of the public service prescribed by regulation; or

(c) employees of New Zealand Forest Research Institute Limited, Landcare Research New Zealand Limited, New Zealand Pastoral Agriculture Climate Change Response Act 2002

Unofficial version showing amendments proposed by
Climate Change Response (Emissions Trading Reform)
Amendment Bill (as introduced)
Research Institute—AgResearch Limited, and employees of any other Crown Research Institute (within the meaning of the Crown Research Institutes Act 1992) prescribed by regulation; or

(d) employees of the EPA.

(2) An authorisation is subject to the terms and conditions that are agreed to by the Minister and the chief executive of the agency that employs the person authorised to be an inspector.

(3) The Minister must supply an inspector with a warrant of authorisation that clearly states the powers and duties of that inspector.

(4) An inspector who exercises, or purports to exercise, a power conferred on that inspector under this Part must carry and be able to produce, if required to do so,—

(a) his or her warrant of authorisation; and
(b) evidence of his or her identity.

(5) An inspector who holds a warrant of authorisation issued under this section must, on the termination of that inspector’s authorisation, surrender his or her warrant of authorisation to the Minister.

37 Power to enter land or premises to collect information to estimate emissions or removals of greenhouse gases

(1) For the purposes of collecting information to assist with the estimation of New Zealand’s human-induced emissions by sources and removals by sinks of greenhouse gases, an inspector may, if authorised in writing by the Minister, enter or re-enter land, or premises where any livestock are likely to be held, excluding any dwellinghouse, at any reasonable time during the ordinary hours of business, to—

(a) carry out surveys, investigations, tests, or measurements (including those that involve leaving measuring equipment on the land or premises):

(b) take samples of water, air, soil, or organic matter.

(2) To avoid doubt, the authorisation given by the Minister may be for a series of surveys, investigations, tests, measurements, or samples.

(3) Reasonable notice, in writing, must be given to the occupier (if any) of the land or premises to be entered that specifies—

(a) when, and by what means, entry is to be made; and
(b) the purpose for which entry is required; and
(c) that the entry is authorised under this section.

(4) Reasonable effort must be made to give notice under subsection (3) to the owner or owners of the land or premises.
(5) If the owner or owners are not given notice, reasonable effort must be made to identify any wāhi tapu areas and archaeological sites on the land by other means.

(6) An inspector who exercises the power of entry under this section may use any assistance that is reasonably necessary to exercise the power.

(7) A person who provides assistance under subsection (6) may exercise the powers provided to inspectors under subsection (1).

38 Limitation on power of entry under section 37
The Minister may only authorise an inspector to exercise the power of entry under section 37 if satisfied that the information sought—
(a) requires specific technical expertise to collect; and
(b) cannot reasonably be obtained from the occupier or owner of the land or premises.

39 Power of entry for inspection
(1) An inspector authorised in writing by the inventory agency may enter land or premises (excluding any dwellinghouse) at any reasonable time during the ordinary hours of business, for the purpose of inspection, to determine whether or not a person is complying with regulations made under section 50(2)(a), (c), (e), or (f).

(2) During an inspection, an inspector may—
(a) require the production of, inspect, and copy any documents or business records (including electronic documents or records):
(b) take samples of water, air, soil, or organic matter:
(c) carry out surveys, investigations, tests, or measurements (including those that involve leaving measuring equipment on the land or premises):
(d) demand from the occupier any other information that the inspector may reasonably require for the purpose of determining whether or not regulations made under section 50(2)(a), (c), (e), or (f) have been complied with.

(3) An inspector who exercises the power of inspection under this section must give the occupier or owner reasonable notice of the inspector’s intention to enter the land or premises unless doing so would defeat the purpose of the entry.

(4) A notice given under subsection (3) must specify—
(a) when entry is to be made; and
(b) the purpose for which the entry is required; and
(c) that the entry is authorised under this section.
(5) An inspector who exercises the power of inspection under this section may be accompanied by any person or persons reasonably necessary to assist him or her with the inspection.

(6) A person who provides assistance under subsection (5) may exercise the powers provided to inspectors under subsection (2)(a) to (c).

(7) Nothing in this section limits the privilege against self-incrimination.

40 Applications for warrants

(1) A District Court Judge who, on written application made on oath by an inspector authorised by the inventory agency, is satisfied that there are reasonable grounds to believe that there are in or on or under or over any land, premises, or dwellinghouse any documents or other records or things (including samples) for which there are reasonable grounds to believe may be evidence of the commission of an offence under section 46 may issue a warrant authorising the entry and search of that land, premises, or dwellinghouse.

(2) Every search warrant must authorise the inspector executing the warrant to—
   (a) enter and search the land, premises, or dwellinghouse within 30 working days of the date of the warrant at any time that is reasonable in the circumstances during the ordinary hours of business; and
   (b) require the production, inspection, and copying of documents or business records (including electronic documents or records); and
   (c) demand from the occupier any other information that the inspector may reasonably require for the purpose of determining whether or not the regulations made under section 50(2) have been complied with; and
   (d) seize any documents or business records that the inspector has reasonable cause to suspect may be evidence of the commission of an offence under section 46; and
   (e) take samples of water, air, soil, or organic matter; and
   (f) use any assistance that is reasonably necessary in the circumstances; and
   (g) use any force to enter (whether by breaking doors or otherwise) that is reasonable in the circumstances.

(3) An inspector may not enter a dwellinghouse unless that inspector is accompanied by a constable.

(4) A person who provides assistance under subsection (2)(f) may exercise the powers provided to inspectors under subsection (2)(a), (b), (d), (e), and (g).

(5) Nothing in this section limits the privilege against self-incrimination.

41 Entry of defence areas

Despite anything in sections 37, 39, and 40, an inspector may not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990), except in accordance with a written agreement between the inventory agency
and the Chief of Defence Force on the date or dates specified in that agreement.

42 Proof of authority must be produced

If powers are exercised under section 37 or section 39 or section 40, an inspector must, on initial entry, and if asked by the occupier at any time afterward, produce for inspection that inspector’s—

(a) warrant of authorisation and evidence of his or her identity; and

(b) written authorisation to enter required under section 37 or section 39 or a search warrant required under section 40.

43 Notice of entry

(1) If, when powers are exercised under section 37 or section 39 or section 40, the occupier is not present at the time that the written authorisation or search warrant is executed, and notice is not given to the owner or owners under section 37 or section 39, the inspector must, in a prominent place, attach a written notice that shows—

(a) the date and time of the entry or search; and

(b) the purpose of the entry or search; and

(c) the name and phone number of that inspector; and

(d) an address at which enquiries may be made.

(2) If the inspector removes, or has removed, any documents or business records from any land, premises, or dwellinghouse, the inspector must hand to the occupier, or attach in a prominent place, a notice that—

(a) lists all of the items taken; and

(b) states where those items are being held (and, if they are being held in 2 or more places, state which items are being held in which place); and

(c) states the procedure that the person must follow to have those items returned.

44 Information obtained under section 39 or section 40 only admissible in proceedings for alleged breach of regulations made under section 50(2)

No document, business record, or other information obtained from a person under section 39 or section 40 is admissible against that person in any criminal or civil proceedings, other than proceedings for an alleged breach of regulations made under section 50(2).

45 Return of items seized

Section 199 of the Summary Proceedings Act 1957 applies, with the necessary modifications, to any property seized or taken by an inspector as if—
(a) references in that section to a constable were references to an inspector; and
(b) the reference in that section to section 198 of that Act were a reference to section 39 or section 40 of this Act.

45A Protection of persons acting under authority of this Part

No inspector or person called upon to assist an inspector who does an act or omits to do an act when carrying out a duty, performing a function, or exercising a power conferred on that person by this Part is under any civil or criminal liability in respect of that act or omission unless the person has acted or omitted to act in bad faith or without reasonable cause.

Offences and penalties

46 Failing to provide required information to inventory agency

Every person who fails, without reasonable excuse, to provide the information to the inventory agency required under regulations made under section 50(2)—
(a) commits an offence; and
(b) is liable on conviction to a fine not exceeding,—
   (i) in the case of an individual, $5,000; or
   (ii) in the case of a body corporate, $30,000.

47 Obstructing, hindering, resisting, or deceiving person exercising power under Part

Every person—
(a) commits an offence who—
   (i) wilfully obstructs, hinders, resists, or deceives a person exercising a power conferred on that person under this Part or regulations made under this Part; or
   (ii) wilfully interferes with any survey, investigation, test, or measurement carried out by an inspector under this Part; or
   (iii) refuses to provide information that an inspector has demanded from that person under section 39(2)(d) or section 40(2)(c), except on the grounds of self-incrimination; and
(b) is liable on conviction to a fine not exceeding,—
   (i) in the case of an individual, $5,000; or
   (ii) in the case of a body corporate, $30,000.

48 Signing false declaration in respect of regulations made under section 50

Every person who signs a declaration that is required by regulations made under section 50, knowing the declaration to be false,—
(a) commits an offence; and
(b) is liable on conviction to a fine not exceeding $5,000.

48A Providing false or misleading information to Registrar

[Repealed]

Miscellaneous provisions

49 Reporting

For the purpose of reporting to the Secretariat under the Convention and the Protocol in accordance with international climate change obligations, the Minister, as and when the Minister thinks fit, direct the inventory agency or the Registrar to provide reports and information to the Minister or directly to the Secretariat.

50 Regulations

(1) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes:

(a) [Repealed]
(b) prescribing agencies whose employees may act as inspectors under section 36, being—
   (i) a Department of the Public Service listed in Schedule 1 of the State Sector Act 1988; or
   (ii) a Crown Research Institute within the meaning of the Crown Research Institutes Act 1992:
(c) [Repealed]
(ca) [Repealed]
(d) [Repealed]
(e) [Repealed]
(f) [Repealed]
(g) [Repealed]
(h) [Repealed]
(i) prescribing forms and notices for the purposes of this Part:
(j) for the purposes of, and subject to, Part 2, giving effect to the terms of the Convention and the Protocol—international climate change obligations, including any decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved in accordance with the Convention or the Protocol with international climate change obligations:
(k) providing for the matters that are contemplated by, or necessary for, giving full effect to this Part and for its due administration.

(2) If recommended by the Minister, the Governor-General may, by Order in Council, make regulations requiring persons to keep and provide information to the inventory agency for the purpose of estimating New Zealand’s human-induced emissions by sources and removals by sinks of greenhouse gases on any or all of the following:

(a) emissions of greenhouse gases into the atmosphere from industrial or trade premises:

(b) volumes of fuel produced, distributed, sold, or used, and the nature of the use of that fuel:

(c) industrial processes, including by-products from industrial processes:

(d) composition of vehicle fleets and use of vehicles, including, but not limited to, distances travelled:

(e) imports and exports of hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride:

(f) imports, exports, manufacture, sales, and the nature of the use of products that contain hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride:

(fa) the registration of motor vehicles of each class that have air-conditioning systems that contain hydrofluorocarbons or perfluorocarbons:

(g) waste composition and weight, dimensional characteristics of landfills, and volume of landfill gases extracted and combusted:

(h) numbers of ruminants and other farmed livestock and their performance:

(i) areas of crops and amounts produced:

(j) amount of nitrogenous and lime fertilisers used:

(k) native and planted trees, the amount of harvesting, the area of land in scrub, and the area of land in other land uses that are necessary to determine land use change under the Convention or the Protocol.

(3) If recommended by the Minister, the Governor-General may, by Order in Council, make regulations requiring persons to provide to the inventory agency information that the person holds on any matter specified in subsection (2) for any year from 1989 to the current reporting year.

(4) Regulations made under subsection (2) may specify the manner and form in which records must be kept and provided, including specifying that those records must be declared as true, the form of that declaration, and who must sign that declaration.

(5) Regulations made under subsection (1) or (2) may be made in respect of different persons or classes of persons.
(6) For the purposes of subsection (5), **classes of persons** includes local authorities.

(7) Any regulations made under this section must be consistent with—

(a) this Act; and

(b) the Convention; and

(c) the Protocol.

(8) The Governor-General may, by Order in Council, make regulations—

(a) amending Schedule 1 by making any amendments to the text of the Convention set out in that schedule as are required to bring the text up to date;

(b) revoking Schedule 1 and substituting a new schedule setting out in an up-to-date form the text of the Convention;

(c) amending Schedule 2 by making any amendments to the text of the Protocol set out in that schedule as are required to bring the text up to date;

(d) revoking Schedule 2 and substituting a new schedule setting out in an up-to-date form the text of the Protocol.

(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).

51 **Incorporation by reference in regulations made under section 50**

(1) The following written material may be incorporated by reference in regulations made under section 50:

(a) decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved by any international or national organisation in accordance with the Convention or the Protocol—international climate change obligations; and

(b) any standards, requirements, or recommended practices—

(i) of any international or national organisation that are adopted, agreed on, made, or approved in accordance with the Convention or the Protocol—international climate change obligations;

(ii) prescribed in any country or jurisdiction that are adopted, agreed on, made, or approved in accordance with the Convention or the Protocol—international climate change obligations.

(2) Material may be incorporated by reference in regulations—

(a) in whole or in part; and
(b) with modifications, additions, or variations specified in the regulations.

(3) Material incorporated by reference in regulations has legal effect as part of the regulations.

(4) Sections 170 to 177 apply to material incorporated by reference into regulations under section 50 as though all references to sections 163 to 165, 167, and 168—a relevant empowering section were references to section 50 and all references to the chief executive were references to the inventory agency.

52 Inventory agency must report to Minister on certain matters before certain regulations are made

(1) Before regulations are made under section 50(2) or (3), the inventory agency must provide a report to the Minister on—

(a) whether or not the information to be collected under the regulations is reasonably available to the inventory agency by other means, including, but not limited to,—

(i) voluntary collection; or

(ii) collection from a government agency that holds the information (provided that the release of the information by that government agency complies with the principles of the Privacy Act 1993 and any provisions of the enactment under which the information was collected); and

(b) any deficiencies with collecting the information using those other means, including, but not limited to,—

(i) deficiencies in obtaining the required quality of information; and

(ii) the lack of certainty that all the required information can be provided; and

(c) whether or not the regulations are likely to place a disproportionate burden on any particular group of persons.

(2) When preparing a report under subsection (1), the inventory agency must consult any person or government agency that is likely to be affected by the proposed regulations.

(3) With respect to a report prepared under subsection (1), the Minister—

(a) must have regard to the report and to the results of consultation; and

(b) may make, as he or she thinks fit, recommendations to the Governor-General to make regulations under section 50(2) or (3).

(4) The Minister may not recommend the making of regulations under section 50(2) and (3) unless he or she is satisfied, on reasonable grounds, that the regulations are necessary to assist New Zealand to meet its international climate change obligations.
53 Consequential amendments
Amendment(s) incorporated in the Act(s):

Part 4
New Zealand greenhouse gas emissions trading scheme

Subpart 1—Participants

54 Participants
(1) A person is a participant,—
(a) in respect of an activity listed in Schedule 3, if the person—
   (i) is required under section 180, 186I, 204, or 213 to be treated as
   the person carrying out the activity; or
   (ii) if subparagraph (i) does not apply, carries out the activity; and
(b) in relation to an activity listed in Schedule 4, if the person—
   (i) carries out the activity, is registered as a participant under section
   57 in respect of the activity, and that registration has taken effect; or
   (ii) becomes a participant under section 192 Part 5 in respect of the
   activity and is not removed from the register in respect of that
   activity.
(2) Any reference in this Part or Part 5 the ETS participant provisions to a person
or participant carrying out an activity must be read as referring to the person
who is to be treated under section 180, 186I, 204, or 213 as carrying out the
activity, or if those sections do not apply, to the person or participant carrying
out the activity.
(3) Subsection (1)(a) is subject to any exemption under an Order in Council made
under section 60.
(4) A person who was a participant under subsection (1) continues to be a partici-
pant for the purposes of this Act in respect of any obligations (including, but
not limited to, the obligation to retain records in accordance with section 67),
or entitlements under section 64, arising in respect of an activity listed in
Schedule 3 or 4 that the person carried out while a participant.
(5) The EPA must ensure that the registers, or the information contained in the
registers, kept for the purposes of section 56 or 57 are open for public inspec-
tion, without fee, on the EPA’s Internet site and in any other form the EPA con-
siders appropriate.

55 Associated persons
(1) This section applies if an activity listed in Schedule 3 has a threshold below or
above which a person becomes a participant.
If this section applies, persons who are associated persons are to be treated as 1 person for the purpose of determining whether the threshold is met.

If a threshold for an activity listed in Schedule 3 is met by associated persons, each of the associated persons—

(a) is to be treated as carrying out the activity for the purposes of this Act; and

(b) may elect to comply with this Part and Part 5 the ETS participant provisions as a—

(i) participant in relation to the activity; or

(ii) member of an unincorporated body; or

(iii) member of a consolidated group under section 150, if the associated person qualifies to be a member of a consolidated group.

56 Registration as participant in respect of activities listed in Schedule 3

(1) A person who carries out an activity listed in Schedule 3 must—

(a) notify the EPA that the person is a participant in respect of the activity; and

(b) if the person does not already have a holding account—

(i) apply to open a holding account under section 18A at the time the person notifies the EPA under paragraph (a); and

(ii) supply the account number of the holding account, or ensure that the account number of the holding account is supplied, to the EPA within 10 working days of receiving the account number from the Registrar.

(2) A notice under subsection (1)(a) must—

(a) be submitted to the EPA within 20 working days of the person becoming a participant in respect of the activity; and

(b) be in the prescribed form; and

(c) contain—

(i) the name of the person; and

(ii) the details of the activity that the person carries out; and

(iii) any other information that the EPA may require; and

(iv) if the person already has 1 or more holding accounts, the account number of the holding account that the person wishes to use for the purpose of section 61(1).

(3) The EPA must, as soon as practicable after receiving a notice under subsection (1)(a),—

(a) enter on a register kept by the EPA for the purpose of this section—
(i) the name of the person; and
(ii) the activity that the person carries out; and
(b) notify the person that the person’s name and the activity the person carries out have been entered on the register.

(4) If the EPA receives a notice under subsection (1)(a) from a person whose name is already on the register kept in accordance with subsection (3), the EPA need not re-enter the person’s name on the register, but must enter next to the person’s name the activity that is specified in the notice, and notify the person that the activity has been entered on the register next to the person’s name.

(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.

57 Applicant to be registered as participant in respect of activities listed in Schedule 4

(1) A person who carries out an activity listed in Schedule 4, or who will do so at the time that the person’s registration takes effect, may apply to be registered as a participant in respect of the activity by application to the EPA in accordance with subsection (2).

(2) An application under subsection (1) must—
(a) be in the prescribed form; and
(b) be accompanied by—
(i) any information that the EPA may require; and
(ii) the prescribed fee (if any); and
(c) if the person already has 1 or more holding accounts, contain the account number of the holding account that the person wishes to use for the purpose of section 61(1).

(3) Any person who does not have a holding account at the time the person submits an application under subsection (1) must—
(a) apply to open a holding account under section 18A at the time the person submits the application; and
(b) supply the account number of the holding account to the EPA within 10 working days of receiving an account number from the Registrar.

(4) Following the receipt of an application under subsection (1), the EPA must register the person in accordance with subsections (5) and (7) if satisfied that the person—
in respect of the activity listed in Schedule 4 specified in the application—

(i) is carrying out the activity in the year in which the EPA receives the application; or

(ii) will carry out the activity in the year in which the person’s registration will take effect in accordance with subsection (8); and

(b) has met any conditions of registration in respect of the activity in this Part or Part 5, the ETS participant provisions; and

(ba) has met any eligibility criteria prescribed in relation to the activity; and

(bb) has met any obligations incurred while previously registered in respect of the activity; and

(c) has paid any prescribed fees or charges.

(5) The EPA registers a person by entering on a register kept by the EPA for the purpose of this section—

(a) the name of the applicant; and

(b) the activity carried out by the applicant; and

(c) the date from which the applicant’s registration as a participant in respect of the activity will take effect in accordance with subsection (8).

(6) After registering a person under subsection (5), the EPA must notify the following persons that the person has been registered as a participant in respect of the activity and the date from which the registration will take effect:

(a) the applicant; and

(b) by notice issued on the same date as the notice to the applicant, any other persons required to be notified under section 188(6)(a), 198(2)(a), or 209(2)(a), as the case may require.

(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.

(7) If the EPA receives an application under subsection (1) in respect of an activity listed in Part 2, 3, or 4 of Schedule 4, then the EPA must, within 20 working days of receiving the application,—

(a) decline the application; or

(b) register the applicant under subsection (5), unless the EPA requires further information from the applicant in order to satisfy himself or herself that the person is carrying out the activity specified in the application, in which case the EPA must either register the person within 20 working days of receiving the further information or decline the application.
The registration of a person takes effect from the date the person’s name is entered on the register under subsection (5) or any later date required by section 198(2)(b), or 209(2)(b), section 198(2) or 209(2).

If the EPA receives an application under subsection (1) from a person whose name is already on the register kept in accordance with subsection (5), and registers the person in respect of the activity specified in the application, the EPA need not re-enter the person’s name on the register, but must enter next to the person’s name the activity that is specified in the application, and notify the person that the activity has been entered on the register next to the person’s name.

58 Removal from register of participants in respect of activities listed in Schedule 4

A person who is registered under section 57 as a participant in respect of an activity listed in Schedule 4 may apply to have that person’s name removed from the register in respect of the activity by application to the EPA in accordance with subsection (2).

An application under subsection (1) must—
(a) be in the prescribed form; and
(b) be accompanied by the prescribed fee (if any).

Following receipt of an application under subsection (1), the EPA must—
(a) note on the register—
(i) that the applicant has applied to be removed from the register as a participant in respect of the activity; and
(ii) the date on which the applicant’s name is to be removed in accordance with subsection (4); and
(b) notify the applicant of the date on which the applicant’s name was, or is to be, removed from the register in accordance with subsection (4); and
(c) notify, by notice issued on the same date as the notice to the applicant under paragraph (b), any other persons required to be notified under section 188(7)(a)(i), 198(3)(a), or 209(3)(a), as the case may require,—
(i) that the applicant has applied to have the applicant’s name removed from the register as a participant in respect of the activity; and
(ii) the date that the applicant’s name was, or is to be, removed in accordance with subsection (4).

The EPA must remove the name of an applicant under subsection (1) from the register in respect of the activity specified in the application immediately or on any later date required by section 188(7)(a)(ii), 198(3)(b), or 209(3)(b), section 191AB, 198(3), or 209(3).
59  Removal from register of participants in respect of activities listed in Schedules 3 and 4

(1) A person who is registered under section 56 or 57 in respect of an activity listed in Schedule 3 or 4 must notify the EPA as soon as practicable if the person ceases, or will cease, to carry out the activity for the remainder of the year and the whole of the following year.

(2) The EPA must, after receiving notice under subsection (1), or otherwise being satisfied that the person has ceased to carry out the activity for the remainder of the year and the whole of the following year,—

(a) remove the name of the person from the register in respect of the activity immediately or, if the notice specifies that the person will cease the activity on a future date, on that date; and

(b) notify the person, and any other person specified in section 188(7)(a)(i), 198(3)(a) or 209(3)(a), as the case may require, that the person’s name—

(i) has been removed from the register in respect of the activity; or

(ii) if the person’s name will be removed from the register in respect of the activity on a future date, that the person’s name will be removed from the register in respect of the activity on that date.

(3) This section is subject to sections 200 and 211, 211, and 211A.

59A  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 189AB 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 a date that is both—

(i) 90 days after the date on which the person was required to pay the penalty; and

(ii) 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 189AA within 365 days after the date on which the emissions return required by section 189AB 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.

59B 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.

60 Exemptions in respect of activities listed in Schedule 3

(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 Schedule 3 from being a participant under this Act in respect of—
(a) the activity; or
(b) part of the activity; or
(c) a proportion of the emissions from the activity; or
(d) a combination of the matters specified in paragraphs (a) to (c).

(1A) An Order in Council made under subsection (1) may specify any terms and conditions (including, but not limited to, terms and conditions imposing geographical or operational restrictions) that the Governor-General thinks fit.

(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) Before recommending the making of an order under subsection (1), the Minister must be satisfied that—

(a) the order will not materially undermine the environmental integrity of the greenhouse gas emissions trading scheme established under this Act; and

(b) the costs of making the order do not exceed the benefits of making the order.

(3) In determining whether to recommend the making of an order under subsection (1), the Minister must have regard to the following matters:

(a) the need to maintain the environmental integrity of the greenhouse gas emissions trading scheme established under this Act; and

(b) the desirability of minimising any compliance and administrative costs associated with the greenhouse gas emissions trading scheme established under this Act; and

(c) the relative costs of giving the exemption or not giving it, and who bears the costs; and

(d) any alternatives that are available for achieving the objectives of the Minister in respect of giving the exemption; and

(e) any other matters the Minister considers relevant.

(4) While an order made under this section is in force, any person or class of persons in respect of whom the order is made is not required to comply with the obligations imposed on participants under this Part and Part 5 the ETS participant provisions in respect of the matters covered by the order.

(5) Before recommending the making or revocation of an order under this section, the Minister must—

(a) consult with persons that the Minister considers are likely to be substantially affected by the making of the order; and

(b) give those persons the opportunity to make submissions; and
(c) consider those submissions.

(6) Despite anything in subsection (2) or (3), the Minister may make a recommendation for the making of an order under subsection (1) in respect of a person with whom the Crown has signed a negotiated greenhouse agreement if—

(a) the negotiated greenhouse agreement was signed before 31 December 2005; and

(b) the order relates to an activity of the person that is covered by the negotiated greenhouse agreement; and

(c) the order is in force for a period not exceeding the term of the negotiated greenhouse agreement, including any extension of the term made in accordance with the agreement.

(7) The Minister is not required to comply with subsection (5) before recommending the making of an order under subsection (1) in respect of a person with whom the Crown has signed a negotiated greenhouse agreement.

(8) A failure to comply with subsection (5) does not affect the validity of any order made.

60A Exemption for participants in standard forestry or permanent forestry

(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 or 1A 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.
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.

Before recommending the making of an order under this section, the Minister must—

(a) consult the persons that the Minister considers are likely to be substantially affected by the making of the order; and
(b) give those persons the opportunity to make submissions; and
(c) consider those submissions.

A failure to comply with subsection (5) does not affect the validity of the order.

**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
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.

61 Requirement to have holding account

(1) A participant or an eligible person must have a holding account for the purpose of—

(a) surrendering units or repaying units as required under this Part or Part 5 the ETS participant provisions;

(b) receiving New Zealand units to which the participant or eligible person is entitled under this Part or Part 5 the ETS participant provisions.

(2) Despite anything in subsection (1), a person who does not have a holding account at the time the person becomes a participant complies with subsection (1) if the person complies with section 56(1)(b) or 57(3), as the case may require.

(3) Despite anything in this Act, the Registrar must, subject to section 18A(5), open a holding account in the name of—

(a) a person—

(i) who applies to open a holding account in accordance with section 56(1)(b) or 57(3); and

(ii) whose name has been entered on a register kept for the purposes of section 56 or 57; or

(b) an eligible person.

62 Monitoring of emissions and removals

(1) A participant must, in respect of each activity listed in Schedule 3 or 4 that is carried out by the participant in a year,—

(a) collect the prescribed data or other prescribed information (which data or information must, if required by regulations made under this Act, be verified by a person or organisation recognised by the EPA under section 92); and

(b) calculate the emissions and the removals from the activity in accordance with the methodologies prescribed in regulations made under this Act; and

(c) if required by regulations made under this Act, have the calculations verified by a person or organisation recognised by the EPA under section 92; and
(d) keep, in the prescribed format (if any), records of the data or information and calculations.

(2) Subsection (1)(b) does not apply in relation to emissions and removals that a person is not required to calculate under—

(a) section 194FC(2), relating to carbon accounting areas (averaging);
(b) section 194PC(3), relating to temporary adverse event land.

63 Liability to surrender units to cover emissions

(1) A participant is liable to surrender 1 unit for each whole tonne of emissions from each activity listed in Schedule 3 or 4 that the participant carries out,—

(a) as calculated in accordance with this Act; and
(b) at the times required under this Act.

(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 188AB (certain natural events or clearance for forest management);
(c) sections 190 and 194JD(3) (limiting liability to unit balances for carbon accounting areas);
(d) section 194FC(2) (carbon accounting areas (averaging));
(e) section 194PC(1) (temporary adverse event land).

(2) If a participant is liable to surrender units under this Act, the participant must make an application under section 18C to transfer the required number of units from the participant’s holding account to a surrender account designated by the EPA.

(3) Subsection (1) is subject to section 191(1)(c).

(3) 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.

(4) See also sections 194DF and 194DG in relation to liability to surrender units when transferring between standard forestry in a carbon accounting area (averaging) and permanent forestry.

63A Modification of liability to surrender units to cover certain emissions

[Repealed]
64 Entitlement to receive New Zealand units for removal activities

(1) A participant is entitled to receive 1 New Zealand unit for each whole tonne of removals from the participant’s removal activities, as calculated in accordance with this Act.

(1A) Subsection (1) does not apply to removals for which a participant is not entitled to receive units under—

(a) section 194FC(2), relating to carbon accounting areas (averaging); or

(b) section 194PC(1), relating to temporary adverse event land; or

(c) section 197, relating to grant-funded forests.

(2) If a participant submits an emissions return to the EPA that contains an assessment of the participant’s entitlement to receive New Zealand units, then the EPA must, within 20 working days of receiving the emissions return, direct the Registrar to transfer the number of New Zealand units contained in the assessment to the participant’s holding account.

(3) Subsection (2) does not apply 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.

(4) [Repealed]

(5) [Repealed]

64A Modification of entitlement to receive New Zealand units for removal activities

[Repealed]

65 Annual emissions returns

(1) In the period beginning on 1 January and ending on 31 March in each year, a participant—

(a) 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;

(b) must, in the case where approval for the participant’s offsetting forest land application is treated as revoked under section 186D(2) or is revoked under section 186G(1), submit an annual emissions return to the EPA in respect of the activity listed in Part 1 of Schedule 3 that the participant carried out that covers the period—

(i) beginning when the activity first occurred; and

(ii) ending on the date that the revocation occurred.
For the purposes of the annual emissions return, the activity carried out in the period specified in subsection (1)(b) is to be treated as if it were carried out in the immediately preceding year.

In the period beginning on 1 January and ending on 31 March in each year,—
(a) 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;
(b) a person who carried out an activity listed in Part 1 of Schedule 3 on pre-1990 forest land that was the subject of an offsetting forest land application must submit an annual emissions return to the EPA if—
(i) the application is declined under section 186B; or
(ii) any of the pre-1990 forest land is removed under a variation under section 186CA; or
(iii) approval of the application is revoked, or to be treated as revoked, under section 186G.

An emissions return required under subsection (1)(b) must cover the period—
(i) beginning when the activity listed in Part 1 of Schedule 3 first occurred; and
(ii) ending on the date the event referred to in subsection (1)(b)(i) to (iii) occurred,—
as if that period were all part of the immediately preceding year.

The annual emissions return must, in respect of activities that the participant carried out during the year covered by the return,—
(a) record the participant’s activities; and
(b) record the participant’s emissions and removals as calculated and, if required, as verified under section 62(b) section 62(1)(b) and (c); and
(c) contain an assessment of the participant’s—
(i) liability to surrender units in respect of the participant’s emissions; and
(ii) entitlement to receive New Zealand units for the participant’s removals; and
(d) be accompanied by such other information as may be prescribed; and
(e) be accompanied by the prescribed fee (if any); and
(f) be signed by the participant.

If section 186E(1) applies,—
(a) subsection (2)(b) and (c) do not apply; and
(b) the annual emissions return must record the emissions for the relevant pre-1990 forest land under section 186D(3)(c) as emissions of the participant for an activity listed in Part 1A of Schedule 3 for which the participant is liable to surrender units.

(3) The participant must submit the annual emissions return under subsection (1) by submitting it in the prescribed manner and format.

(4) Following the submission of an annual emissions return under subsection (1), a participant 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).

(5) A participant who carries out an activity listed in Part 1 of Schedule 4 must submit emissions returns as set out in section 189(2).

(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 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.

66 Quarterly returns for other removal activities

(1) Despite anything in this Act, a person who is a participant in respect of an activity listed in Part 2 of Schedule 4 may, within 20 working days after the following dates, submit an emissions return that complies with subsection (2):
   (a) 31 March;
   (b) 30 June;
   (c) 30 September.

(2) An emissions return referred to in subsection (1) must—
   (a) only relate to activities listed in Part 2 of Schedule 4 in respect of which the person is a participant; and
   (b) in respect of each activity covered by the return, be in respect of the period—
      (i) commencing on the later of—
         (A) the day the person became a participant in respect of the activity; or
         (B) the day after the end of the period covered by the participant’s last emissions return in respect of the activity; and
(ii) ending on a date specified in subsection (1); and
(c) contain the information specified in section 65(2) in respect of the period covered by the return; and
(d) be submitted in accordance with section 65(3).

(3) Despite anything in section 65, the annual emissions return of a participant who has submitted a return for an activity under this section in any year must cover only the part of the year not covered by a return under this section.

67 Retention of emissions records

(1) A participant must keep sufficient records to enable the EP A to verify, in respect of any year in which the participant carries or carried out an activity listed in Schedule 3 or 4,—
   (a) the activities carried out by the participant; and
   (b) the emissions and removals from those activities as calculated and, if required, as verified under section 62(1)(b) and (c); and
   (c) the participant’s assessment of the participant’s—
      (i) liability to surrender units; and
      (ii) entitlement to receive New Zealand units; and
   (d) any other information contained in an emissions return submitted by the participant.

(2) The records specified in subsection (1) must—
   (a) include the records specified in section 62(1)(d); and
   (b) in the case where they relate to an activity listed in Part 1 of Schedule 3 or 4 a forestry activity, be retained for a period of at least 20 years after the end of the year to which they relate; and
   (c) in every other case, be retained for a period of at least 7 years after the end of the year to which they relate.

Subpart 2—Issuing and allocating New Zealand units

68 Issuing New Zealand units

(1) The Minister may, at any time, direct the Registrar to issue New Zealand units into a Crown holding account.

(2) Before giving a direction, the Minister must—
   (a) consult the Minister of Finance; and
   (b) have regard to the following matters:
      (i) the number of units that New Zealand has received, or that the Minister expects New Zealand to receive, under any international agreement; and
(ii) New Zealand’s international obligations, including any obligation to retire units equal to the number of tonnes of emissions that are emitted in New Zealand; and

(ii) international climate change obligations; and

(iii) the proper functioning of the greenhouse gas emissions trading scheme established under this Act; emissions trading scheme; and

(iv) any other matters that the Minister considers relevant; and

(c) if the direction under subsection (1) relates to issuing New Zealand units into a Crown holding account on or after 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 1 January 2031, and if the Paris Agreement does not provide for a commitment period that starts on that date, have regard to the following matters:

(i) New Zealand’s annual emissions for the 5 years (on record) before the year of the direction under consideration; and

(ii) the report of the most recent review completed under section 160(1); and

(iii) New Zealand’s obligations under the Convention (if any); and

(iii) international climate change obligations; and

(iv) New Zealand’s anticipated future international obligations.

(3) The Registrar must give effect to a direction given by the Minister under subsection (1).

(4) As soon as practicable after giving a direction under subsection (1), the Minister must—

(a) publish a copy of the direction in the Gazette; and

(b) ensure that the direction is accessible via the Internet site of the EPA; and

(c) present a copy of the direction to the House of Representatives.

(5) Each copy of the direction under subsection (4) must be accompanied by a statement setting out how the Minister has had regard to the matters specified in subsection (2)(b) and, if relevant, subsection (2)(c).

69 Notification of intention regarding New Zealand units

(1) The Minister must give notice in the Gazette of the Crown’s intentions to issue and allocate or sell New Zealand units at least 9 months before the end of each of the following periods:

(a) the first commitment period;

(b) each subsequent commitment period (if any);

(e) if there is no subsequent commitment period, then—
(i) the 5-year period commencing on 1 January 2013;
(ii) each subsequent 5-year period after the period specified in sub-paragraph (i).

(2) The notice must include—
   (a) the number of New Zealand units that are intended to be issued under section 68; and
   (b) the time frames for issuing the New Zealand units under section 68; and
   (c) the intended time frame for any allocation of New Zealand units, or the sale of New Zealand units and the method of sale.

(3) The Minister must present a copy of the report under section 160(7)(b) to the House of Representatives before notice may be given under this section.

(4) The Minister must ensure that a copy of any notice given under subsection (1) is accessible via the Internet site of the EPA.

(5) The Crown is not bound by any notice given under subsection (1) to make any decisions in relation to the issuing, sale, or allocation of New Zealand units.

Allocation of New Zealand units in relation to pre-1990 forest land and fishing

70 Governor-General may issue allocation plans

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, issue an allocation plan providing for the matters in section 72 or 74.

(2) The allocation plan must—
   (a) comply with any relevant requirements specified in this subpart; and
   (b) be presented to the House of Representatives as soon as practicable after it is issued, along with, in the case of the fishing allocation plan, the report provided to the Minister under section 76(5) and any of the Minister’s decisions on the recommendations contained in the report.

(3) An allocation plan comes into force on the day after the date it is presented to the House of Representatives.

(4) An 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.

71 Correction of allocation plans

(1) For the purpose of correcting any minor mistakes or defects in an allocation plan, the Minister may, without complying with section 75 or 76, recommend that the Governor-General amend any allocation plan.

(2) An amended allocation plan comes into force at the time it is issued.

(3) Section 70(2)(b) and (2) do not apply to an amended allocation plan.
Allocation in respect of pre-1990 forest land

(1) The Minister must recommend to the Governor-General that an allocation plan be issued under section 70 in respect of pre-1990 forest land.

(2) The pre-1990 forest land allocation plan must provide for—

(a) an allocation of New Zealand units to—

(i) landowners, or former landowners, of eligible land who are eligible persons; or

(ii) a person appointed in accordance with section 73 to hold any New Zealand units allocated in respect of the eligible land specified in paragraph (b)(i)(A); and

(b) an allocation of New Zealand units of—

(i) 18 New Zealand units for each hectare of eligible land that was Crown forest licence land on 1 January 2008 and—

(A) will not have been transferred to iwi as part of a Treaty of Waitangi settlement by the date on which the allocation plan is issued; or

(B) has been, or will have been, transferred to iwi as part of a Treaty of Waitangi settlement either on or after 1 January 2008 but before the date on which the allocation plan is issued:

(ii) 39 New Zealand units for each hectare of eligible land, other than land covered by subparagraph (i) that was transferred to the landowner, or former landowner, of the land—

(A) after 31 October 2002; or

(B) before 1 November 2002 if, since that date, ownership (including, if specified in the allocation plan, the beneficial ownership) of any body corporate owning the land or, if specified in the allocation plan, the beneficial ownership of the land owned by a body corporate, has changed in the manner and to the extent specified in the allocation plan:

(iii) 60 New Zealand units for each hectare of eligible land not covered in subparagraph (i) or (ii).

(3) The pre-1990 forest land allocation plan must provide that the New Zealand units allocated under the plan will be transferred so that—

(a) a person allocated 18 units for each hectare of eligible land in accordance with subsection (2)(b)(i) receives—

(i) 7 units for each hectare of eligible land by 31 December 2012; and

(ii) 11 units for each hectare of eligible land after 31 December 2012; and
(b) a person allocated 39 units for each hectare of eligible land in accordance with subsection (2)(b)(ii) receives—

(i) 15 units for each hectare of eligible land by 31 December 2012; and

(ii) 24 units for each hectare of eligible land after 31 December 2012;

and

(c) a person allocated 60 units for each hectare of eligible land in accordance with subsection (2)(b)(iii) receives—

(i) 23 units for each hectare of eligible land by 31 December 2012; and

(ii) 37 units for each hectare of eligible land after 31 December 2012.

(4) In addition to the matters provided for in subsections (2) and (3), the pre-1990 forest land allocation plan—

(a) must specify—

(i) the landowners, or former landowners, of the eligible land who are eligible persons; and

(ii) the manner in which, and the extent to which, the ownership of eligible land must have changed to constitute a “transfer” for the purposes of subsection (2)(b)(ii)(A) or (B); and

(iii) the circumstances, if any, in which a transfer for the purposes of subsection (2)(b)(ii) includes transmission; and

(iv) the manner in which, and the extent to which, the ownership of any body corporate owning eligible land must have changed for the purposes of subsection (2)(b)(ii)(B); and

(v) the data and information, or the kind of data and information, that each eligible person must supply, and the form in which the person must supply the data and information, in order to—

(A) receive an allocation of New Zealand units under the plan; and

(B) enable the Minister to determine the person’s correct allocation of New Zealand units under the allocation plan; and

(vi) in relation to an eligible person who receives an allocation of New Zealand units,—

(A) the records, or the kinds of records, that the person must retain; and

(B) the form in which the person must retain the records; and

(C) the period for which the person must retain the records; and

(b) may specify—
(i) the manner in which, and the extent to which, the beneficial ownership of eligible land must have changed to constitute a “transfer” for the purposes of subsection (2)(b)(ii)(A) or (B); and

(ii) the manner in which, and the extent to which, the beneficial ownership of any body corporate owning eligible land, or, if relevant, the beneficial ownership of the land owned by a body corporate, must have changed for the purposes of subsection (2)(b)(ii)(B); and

(c) may provide for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

(5) Despite subsection (2)(b), the pre-1990 forest land allocation plan must treat any Crown forest licence land transferred pursuant to the Te Uri o Hau Claims Settlement Act 2002 as if it were eligible land covered by subsection (2)(b)(iii).

(6) For the purposes of—

(a) this section,—

(i) eligible land is to be treated as transferred on the settlement date, unless the pre-1990 forest land allocation plan specifies another date or event upon which any or all eligible land is to be treated as transferred; and

(ii) Crown forest licence land means eligible land subject to a Crown forestry licence under section 14 of the Crown Forest Assets Act 1989; and

(b) subsection (2)(b)(ii),—

(i) transfer means a transfer specified in the pre-1990 forest land allocation plan, but does not include transmission unless the allocation plan specifies otherwise (for example, in relation to any land vested under an Act); and

(ii) body corporate means a company whether incorporated in New Zealand or elsewhere and any other body corporate specified in the pre-1990 forest land allocation plan.

73 Minister to appoint person to hold certain New Zealand units

(1) The Minister must, before making a determination in respect of the eligible land specified in section 72(2)(b)(i)(A), by notice in the Gazette,—

(a) appoint a person to—

(i) apply for an allocation of New Zealand units in respect of the land; and

(ii) hold on trust for the future owners of the land any New Zealand units allocated in respect of the land; and

(b) notify—
(i) the structure, composition, and functions of the person; and
(ii) the terms and conditions upon which the person is to hold the New Zealand units.

(2) If the Minister has not appointed a person in accordance with subsection (1) before issuing a notice under section 77(1) inviting persons to apply for an allocation of New Zealand units under the pre-1990 forest land allocation plan, then the Minister must, by notice in the Gazette, appoint a person to apply for an allocation of New Zealand units in respect of the land specified in section 72(2)(b)(i)(A) on behalf of the person to be appointed under subsection (1).

74 Allocation to owners of fishing quota

(1) The Minister must recommend to the Governor-General that an allocation plan be issued under section 70 in relation to fishing.

(2) The fishing allocation plan must provide for—
   (a) an allocation of New Zealand units to persons who—
      (i) were shown on the quota register kept under Part 8 of the Fisheries Act 1996 as owners of fishing quota on 24 September 2009; and
      (ii) meet any tests or thresholds that are specified in the allocation plan; and
   (b) a total of 700 000 New Zealand units to be available for allocation under the allocation plan; and
   (c) an allocation of New Zealand units to each eligible person calculated in accordance with the following formula:

\[ P = \frac{A \times (B + C)}{(D + E)} \]

where—
P is the eligible person’s allocation entitlement under the fishing allocation plan
A is 700 000 New Zealand units
B is the total quota weight equivalent (expressed in kilograms) of stocks, other than Foveaux Strait dredge oysters, owned by the eligible person on the close of 24 September 2009
C is the total quota weight equivalent (expressed as a number of oysters) of Foveaux Strait dredge oyster stock owned by the eligible person on the close of 24 September 2009 divided by 9.8
D is the sum of the total allowable commercial catch (expressed in kilograms) of stocks, other than Foveaux Strait dredge oysters (excluding any quota shown in the quota register kept under Part 8 of the Fisheries Act 1996 as being owned by the Crown), on the close of 24 September 2009
E is the sum of the total allowable commercial catch (expressed as a number of oysters) of the Foveaux Strait dredge oyster stock divided by 9.8 (excluding any quota shown in the quota register kept under Part 8 of the Fisheries Act 1996 as being owned by the Crown) on the close of 24 September 2009; and

d) the data and information, or the kind of data and information, that each eligible person must supply, and the form in which the person must supply the data and information, in order to—

(i) receive an allocation of New Zealand units under the allocation plan; and

(ii) enable the Minister to determine the person’s correct allocation of New Zealand units under the allocation plan; and

(e) in relation to an eligible person who receives an allocation of New Zealand units,—

(i) the records, or the kinds of records, that the person must retain; and

(ii) the form in which the person must retain the records; and

(iii) the period for which the person must retain the records; and

(f) any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

(3) For the purposes of this section, quota weight equivalent and total allowable commercial catch have the same meaning as in section 2(1) of the Fisheries Act 1996.

75 Consultation on pre-1990 forest land allocation plan

(1) Before making a recommendation under section 72, the Minister must consult, or be satisfied that the chief executive has consulted, representatives of persons that appear to the Minister or the chief executive likely to have an interest in the pre-1990 forest land allocation plan.

(2) A failure to comply with this section does not affect the validity of any pre-1990 forest land allocation plan issued under section 70.

(3) Any consultation undertaken before the commencement of this section in respect of the pre-1990 forest land allocation plan is to be treated as the consultation required for the purposes of this section.

76 Consultation on fishing allocation plan

(1) Before making a recommendation under section 74(1), the Minister must—

(a) prepare a draft fishing allocation plan; and

(b) consult, or be satisfied that the chief executive has consulted, persons (or their representatives) that appear to the Minister or the chief executive likely to have an interest in the fishing allocation plan.
(2) The draft fishing allocation plan must provide for the matters set out in section 74(2).

(3) The Minister must ensure that—

(a) public notice is given of the draft fishing allocation plan; and

(b) the draft fishing allocation plan is made available in hard copy at the office of, and is accessible via the Internet site of the department of, the chief executive responsible for the administration of this Act and at such other places as the Minister considers appropriate.

(4) The notice of the draft fishing allocation plan given under subsection (3) must specify—

(a) how a hard copy of the draft fishing allocation plan may be obtained; and

(b) that any person may make a submission on the draft fishing allocation plan, how submissions may be made, and by what date submissions must be made (which must be no earlier than 20 working days after the date on which notice is given).

(5) If any submission is made on the draft fishing allocation plan under subsection (4), the chief executive must, after the expiry of the time for making submissions, prepare for the Minister a report that contains recommendations in respect of the submissions.

77 Determinations made in accordance with allocation plan

(1) As soon as practicable after an allocation plan comes into force, the Minister must give public notice inviting any person who may be eligible for an allocation of New Zealand units under the allocation plan to apply for an allocation.

(2) The notice under subsection (1) must specify—

(a) the form in which an application must be made; and

(b) the final date by which applications for an allocation of New Zealand units under the allocation plan must be received by the Minister (which must, in the case of a pre-1990 forest land allocation plan, be no earlier than 40 working days after the date on which the notice is given and, in the case of a fishing allocation plan, be no earlier than 20 working days after the date on which the notice is given); and

(c) the data and other information, or the kind of data and other information, that must accompany the application in order for the person's application to be considered (which must be the data and other information specified in the allocation plan); and

(d) how the data and other information are to be supplied.

(3) To avoid doubt, data and information supplied under subsection (2) are subject to the Official Information Act 1982.
Despite anything in this subpart or in any allocation plan,—

(a) a person is not entitled to receive an allocation of New Zealand units under an allocation plan unless the person applies to the Minister for an allocation under the allocation plan and supplies the required data and other information in the required format; and

(b) the Minister is not required to make a determination in respect of an application for an allocation if the application is received after the date specified in the notice under subsection (2)(b).

The Minister must, in relation to each application received by the date specified in the notice given under subsection (1), make a preliminary determination in accordance with the allocation plan as to—

(a) whether the person is eligible to receive an allocation of New Zealand units under the plan; and

(b) the total number of New Zealand units the person is entitled to receive under the plan (which may be expressed by reference to a formula); and

(c) the year or years in which the New Zealand units will be transferred to the person.

After making a preliminary determination, the Minister must notify the applicant of the following:

(a) whether, in the Minister’s opinion, the person is an eligible person under the allocation plan, and—

(i) if so, the total number of New Zealand units the Minister has determined the person is entitled to receive under the plan (which may be expressed by reference to a formula) and the year or years in which those units will be transferred; and

(ii) if not, the reasons for that opinion; and

(b) that, if the applicant believes there are any errors or miscalculations in the Minister’s preliminary determination of eligibility or entitlement, the person may provide further information to the Minister supporting a different determination; and

(c) the final date by which any further information must be received by the Minister (which must, in the case of a pre-1990 forest land allocation plan, be no earlier than 20 working days after the date on which the notice is given, and in the case of a fishing allocation plan, be no earlier than 10 working days after the date on which the notice is given).

Following the expiry of the date referred to in subsection (6)(c), the Minister must, taking into account any information received by the due date in response to the notice, make a final determination of the matters specified in subsection (5).
As soon as practicable after making a final determination under subsection (7), the Minister must—

(a) notify the applicant of the determination; and

(b) publish the determination in the Gazette; and

(c) ensure that the determination is accessible via the Internet site of the EPA; and

(d) if New Zealand units are allocated to an applicant, direct the Registrar to transfer the allocated New Zealand units to the applicant’s holding account in the amounts and on the date or dates specified in the determination.

Despite subsection (8)(d), if the applicant does not have a holding account, the Registrar is not required to comply with a direction by the Minister until the applicant has opened a holding account that has been approved by the Registrar.

For the purposes of making a preliminary determination under subsection (5) or a final determination under subsection (7) in respect of a fishing allocation plan, the Minister may access, and rely on, the information set out in the quota register kept under Part 8 of the Fisheries Act 1996.

To avoid doubt, and without limiting the powers conferred under sections 94 to 106, the EPA or any other person with powers under sections 94 to 106 may exercise those powers for the purposes of ascertaining whether a person who applies for an allocation of New Zealand units or is allocated New Zealand units under an allocation plan is complying with, or has complied with,—

(a) any requirement in this section or section 78 or 79; or

(b) any requirement in the relevant allocation plan (for example, a requirement to keep records).

Power to revoke and replace determinations

Despite anything in section 77(7) or (8), the Minister may (but is not required to) reconsider, revoke, and replace a determination made under section 77(7) with a new determination if—

(a) the allocation plan under which the determination was made is amended; or

(b) in the Minister’s opinion, the determination has resulted, or would otherwise result, in a person receiving an incorrect allocation because—

(i) of an error in the application of the criteria specified in the applicable allocation plan; or

(ii) a person has provided altered, false, incomplete, or misleading information in response to a notice given under section 77(1) or (6) or 86E.
Before revoking and replacing a determination that would affect the number of units allocated to a person, the Minister must—

(a) make a preliminary determination of the matters specified in section 77(5); and

(b) give notice to the person of—

(i) the ground specified in subsection (1) and any information that led the Minister to reconsider the person’s allocation under the relevant allocation plan; and

(ii) the Minister’s preliminary determination made under paragraph (a); and

(c) follow the procedure in section 77(6) to (8), which apply, with any necessary modifications, to the new determination.

The Minister may not revoke or replace a determination under this section after the expiry of 4 years from the date of notification of the Minister’s first determination under section 77(7) if the new determination would decrease the number of units allocated to a person.

Despite subsection (3), if the Minister is satisfied that an application for an allocation under an allocation plan, or any other document submitted in respect of the application, was submitted with the intention to deceive, then the Minister may revoke and replace any determination that resulted from the application at any time so as to decrease the number of units allocated to the applicant (including decreasing that number to zero).

Subsections (6) and (7) apply if—

(a) the Minister has made a determination under section 77 that Te Ohu Kai Moana Trustee Limited is entitled to receive New Zealand units under a fishing allocation plan; and

(b) New Zealand units have been transferred to Te Ohu Kai Moana Trustee Limited under the determination in respect of unallocated quota; and

(c) Te Ohu Kai Moana Trustee Limited has allocated and transferred unallocated quota together with New Zealand units associated with that quota to any iwi or mandated iwi organisation in accordance with section 138A(2) of the Maori Fisheries Act 2004; and

(d) the Minister reconsiders the determination.

In reconsidering the determination of Te Ohu Kai Moana Trustee Limited’s entitlement, the Minister must treat an iwi or a mandated iwi organisation which has received unallocated quota from Te Ohu Kai Moana Trustee Limited as if it owned that quota on 24 September 2009.

If the Minister decides that the determination of Te Ohu Kai Moana Trustee Limited’s entitlement to New Zealand units should be revoked, the Minister must make a new determination of—
(a) Te Ohu Kai Moana Trustee Limited’s entitlement to be allocated New Zealand units under the fishing allocation plan as if the unallocated quota that Te Ohu Kai Moana Trustee Limited owned on the date of the new determination were all the unallocated quota it owned on 24 September 2009; and

(b) the entitlement of an iwi or a mandated iwi organisation that has received unallocated quota to be allocated New Zealand units under the fishing allocation plan as if that iwi or mandated iwi organisation owned the unallocated quota it received on 24 September 2009.

(8) In subsections (5) to (7) and section 79(4),—

- **iwi** has the same meaning as in section 5 of the Maori Fisheries Act 2004

- **mandated iwi organisation** has the same meaning as in section 5 of the Maori Fisheries Act 2004

- **unallocated quota** means quota held by Te Ohu Kai Moana Trustee Limited on 24 September 2009 and that had not been allocated under section 130(1), 135, or 151 of the Maori Fisheries Act 2004 at that date.

79 **Effect of new determination**

(1) If the Minister makes a new determination in accordance with section 78, then—

(a) the new determination applies and replaces the earlier determination from the date the new determination is made; and

(b) the Minister—

(i) may, if practicable, amend or revoke any direction given under section 77(8)(d); or

(ii) must otherwise give any new direction necessary under section 77(8)(d) in order to give effect to the new determination.

(2) Subject to subsection (3), a new determination does not change or otherwise affect any transfer of New Zealand units made to a person in accordance with a revoked determination before the date the new determination came into effect.

(3) If New Zealand units have been transferred to a person under an earlier determination and the person would not be entitled under the new determination to those New Zealand units (including where the result of the new determination is that the person would not be entitled to any New Zealand units under the allocation plan), then—

(a) the notice of the new determination given to the person under section 77(8) must specify—

(i) the number of units required to be repaid; and

(ii) the Crown holding account into which they must be transferred; and
(b) the person must, within 60 working days of the date of the notice, repay those units by transferring the specified number of units to a Crown holding account in accordance with the notice, and sections 134 and 135 apply, with any necessary modifications, as if—

(i) the units the person is required to repay were units transferred to the person in error; and

(ii) the requirement to repay the units arose under section 125.

(4) This section applies to any new determination made in accordance with section 78(7) as if—

(a) only the New Zealand units associated with the unallocated quota held by Te Ohu Kai Moana Trustee Limited at the date of the new determination had been transferred to it under the earlier determination; and

(b) the New Zealand units associated with the unallocated quota transferred to an iwi or a mandated iwi organisation by Te Ohu Kai Moana Trustee Limited had been transferred to the iwi or mandated iwi organisation under the earlier determination.

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 comes into force on the day after the date it is 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.

Allocation of New Zealand units in relation to industry and agriculture

80 Criteria for allocation of New Zealand units to industry

(1) A person is eligible for an allocation of New Zealand units for an eligible industrial activity in respect of a year if the person carries out the activity at any time in a year.

(2) Subsection (1) is subject to sections 86E and 161D(7).

81 Entitlement to provisional allocation for eligible industrial activities

(1) Subject to section 82, an eligible person is entitled to a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year calculated in accordance with the following formula:

\[ PA = LA \times \sum (PDCT \times AB) \]
where—

PA is the person’s provisional allocation entitlement for the eligible industrial activity for the year

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 2010, 2011, and 2012; and

(ii) in each year after 2012, the level of assistance from the previous year less 0.01 (the phase-out rate for a moderately emissions-intensive eligible industrial activity);

(b) for a highly emissions-intensive eligible industrial activity,—

(i) 0.9 in 2010, 2011, and 2012; and

(ii) in each year after 2012, the level of assistance from the previous year less 0.01 (the phase-out rate for a highly emissions-intensive eligible industrial activity)

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 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 2020; and

(ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate

∑ is the symbol for summation (of each PDCT × AB calculation)

PDCT is the amount of each prescribed product from the eligible industrial activity produced by the person in the year immediately preceding the year to which the provisional allocation relates, as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product that is required to be used by the eligible person by regulations made under this Act.

(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 2030; and

(ii) 0.02 for each year after 2030 until 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.

82 Entitlement to allocation for eligible industrial activities where provisional allocation not received

(1) An eligible person who carries out an eligible industrial activity at any time in a year, but did not carry out that activity during the immediately preceding year (a new entrant) is not entitled to a provisional allocation calculated under section 81, but is entitled to an allocation under subsection (2).

(2) A new entrant or other eligible person who did not receive a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year is entitled to an allocation of New Zealand units for the eligible industrial activity for the year calculated in accordance with the formula in section 83(2).

83 Annual allocation adjustment

(1) A person who has received a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year must, subject to section 84, calculate the person’s annual allocation adjustment for the activity for the year by—
   (a) determining the person’s final allocation entitlement for the eligible industrial activity in respect of the year in accordance with the formula in subsection (2); and
   (b) then determining the annual allocation adjustment in accordance with the formula in subsection (3).

(2) The formula for the calculation of a person’s final allocation entitlement is as follows:

\[ FA = LA \times \sum (PDCT \times AB) \]

where—

FA is the person’s final allocation entitlement for the eligible industrial activity for the year

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 2010, 2011, and 2012; and
   (ii) in each year after 2012, the level of assistance from the previous year less 0.01 (the phase-out rate for a moderately emissions-intensive eligible industrial activity):

(b) for a highly emissions-intensive eligible industrial activity,—
   (i) 0.9 in 2010, 2011, and 2012; and
in each year after 2012, the level of assistance from the previous year less 0.01 (the phase-out rate for a highly emissions-intensive eligible industrial activity)

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 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 2020; and

(ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate

∑ is the symbol for summation (of each PDCT × AB calculation)

PDCT is the amount of each prescribed product from the eligible industrial activity produced by the person in the year, as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product that is required to be used by the eligible person by regulations made under this Act.

(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 2030; and

(ii) 0.02 for each year after 2030 until 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) The formula for the calculation of a person’s annual allocation adjustment is as follows:

\[ AA = PA - FA \]

where—

AA is the person’s annual allocation adjustment of units for the eligible industrial activity for the year

PA is the person’s provisional allocation for the eligible industrial activity notified by the EPA under section 86B

FA is the person’s final allocation entitlement for the eligible industrial activity for the year calculated under subsection (2).
(4) If the figure for AA calculated under the formula in subsection (3)—
   (a) is a negative number, then the person is entitled to be allocated the num-
       ber of units in the annual allocation adjustment:
   (b) is a positive number, then the person is liable to repay the number of
       units in the annual allocation adjustment.

(5) If an eligible person is entitled to be allocated the number of units in an annual
allocation adjustment and the person—
   (a) makes an application for a provisional allocation for the same eligible
       industrial activity in the year following the year to which the annual allo-
       cation adjustment relates, then the person must record the adjustment in
       the person’s application for a provisional allocation for the following
       year:
   (b) does not make an application for a provisional allocation for the same
       eligible industrial activity in the year following the year to which the
       annual allocation adjustment relates, the person may make a separate
       application under section 86 for an allocation of the number of units in
       the annual allocation adjustment.

(6) If an eligible person is liable to repay the number of units in an annual alloca-
tion adjustment and the person—
   (a) makes an application for a provisional allocation for the same eligible
       industrial activity in the year following the year to which the annual allo-
       cation adjustment relates, then—
       (i) the person must record the adjustment for the year in the person’s
           application for a provisional allocation for the following year; and
       (ii) subject to section 86B, the EPA must deduct the number of units
           in the adjustment from the provisional allocation for the following
           year, unless the number of units in the provisional allocation is
           less than the adjustment, in which case the person must, within 20
           working days of being notified of the shortfall in the number of
           units by the EPA, repay the shortfall by transferring the relevant
           number of units to a Crown holding account designated by the
           EPA; or
   (b) does not make an application for a provisional allocation for the same
       eligible industrial activity in the year following the year to which the
       annual allocation adjustment relates, then the person must—
       (i) by 30 April in the year following the year to which the annual allo-
           cation adjustment relates, notify the EPA of the person’s
           annual allocation adjustment; and
       (ii) by 31 May in the year following the year to which the annual allo-
           cation adjustment relates, repay the number of units in the annual
allocation adjustment by transferring the units to a Crown holding account designated by the EPA.

(7) If a person is required to repay units under this section, then—

(a) the units repaid must be of a type that may be transferred to a surrender account at the time the units are repaid; and

(b) sections 134 and 135 apply, with any necessary modifications, as if—

(i) the units the person is required to repay were units transferred to the person in error; and

(ii) the requirement to repay the units arose under section 125.

(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.

84 Closing allocation adjustment

(1) An eligible person who has received a provisional allocation for an eligible industrial activity in respect of a year and who ceases during the year to carry out that activity must, within 20 working days of ceasing to carry out the activity,—

(a) calculate the person’s final allocation entitlement for the activity for the year in accordance with the formula in section 83(2); and

(b) using the formula in section 83(3), calculate the person’s closing allocation adjustment, and, for this purpose, section 83(3) applies, with any necessary modifications, as if the closing allocation adjustment were an annual allocation adjustment; and

(c) if the closing allocation adjustment is—

(i) a negative number, apply to the EPA under section 86 for an allocation of the number of units in the closing allocation adjustment:

(ii) a positive number, notify the EPA of the person’s closing allocation adjustment and repay the number of units in the closing allocation adjustment by transferring the units to a Crown holding account designated by the EPA.

(2) For the purposes of subsection (1), a person who has received a provisional allocation for an eligible industrial activity in respect of a year and who temporarily does not carry out the activity—

(a) is not immediately to be treated as having ceased to carry out the activity; but

(b) must, if the person does not carry out the activity for a period of 3 months in the year, notify the EPA as soon as practicable after the expiry of that 3-month period of that fact; and
(c) must, if given notice by the EPA (following receipt of the person’s notice under paragraph (b)) that the EPA is satisfied that the person has ceased to carry out the activity for the year and that the person is required to comply with subsection (1), within 20 working days of the date of the EPA’s notice, comply with subsection (1).

(3) Subject to subsection (4), an eligible person who has complied with subsection (1) during the year in which the person ceased to carry out the eligible industrial activity—

(a) is not required to comply with section 83 in respect of that activity; and

(b) may not calculate an annual allocation adjustment under section 83 in respect of that year.

(4) A person who has applied for or notified a closing allocation adjustment in accordance with subsection (1) during a year, but who then recommences carrying out the activity in the year,—

(a) may calculate an annual allocation adjustment for the year in accordance with the following formula:

\[ AA = PA - FA - CAA \]

where—

AA is the person’s annual allocation adjustment of units for the eligible industrial activity for the year

PA is the person’s provisional allocation for the eligible industrial activity for the year notified by the EPA under section 86B

FA is the person’s final allocation entitlement for the eligible industrial activity for the year (which must be calculated in accordance with section 83(2))

CAA is the amount of the person’s closing allocation adjustment for the eligible industrial activity; and

(b) is entitled to be allocated the number of units in the person’s annual allocation adjustment (as calculated under paragraph (a)) in accordance with section 83(5).

(5) Section 83(7) applies to the repayment of units under this section as if the units were required to be repaid under section 83.

84A Regulations reducing general phase-out rate

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that set the phase-out rate to be used by all participants for the purposes of sections 81(1) and 83(2) for a year or years beginning on or after 1 January 2031.

(2) The phase-out rate must be—

(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.

(3) The Minister may not recommend the making of regulations unless—
   (a) the Climate Change Commission has recommended (under section 84D) that the phase-out rate be set at a lower rate than in sections 81(2)(a) and 83(2A)(a); and
   (b) the Minister has complied with the requirements of section 84C.

84B Regulations increasing phase-out rate for specific activities

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that set the phase-out rate to be used in respect of 1 or more eligible industrial activities for the purposes of sections 81(1) and 83(2) for an emissions budget period beginning on or after 1 January 2026.

(2) The phase-out rate must be more than the rate in sections 81(2)(a) and 83(2A)(a).

(3) 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.

(4) The Minister may not recommend the making of regulations unless—
   (a) the Climate Change Commission has published a report (under section 84D) considering whether the phase-out rate for the eligible industrial activity should be set at a higher rate than in sections 81(2)(a) and 83(2A)(a); and
   (b) the Minister has complied with the requirements of section 84C.

(5) In order to apply to an emissions budget period, regulations must be made before the beginning of the emissions budget period.

(6) Regulations may not be amended during an emissions budget period unless—
   (a) the emissions budget for the emissions budget period has been revised; or
   (b) the Minister is satisfied that, since the regulations were made, there has been a significant change that affects the considerations listed in section 84C(3).

(7) Before amending regulations, the Minister must seek advice from the Climate Change Commission under section 84D.
84C Procedure for regulations setting phase-out rates

(1) Before recommending the making of regulations under section 84A or 84B, the Minister must—

(a) consult, or be satisfied that the chief executive or the Climate Change Commission has consulted, the persons (or representatives of those persons) that appear to the consulter likely to be substantially affected by the regulations; and

(b) be satisfied that the regulations are consistent with meeting the emissions budget that will apply when the regulations are in force.

(2) The process for consultation must include—

(a) giving public notice of the proposed terms of the recommendation, and of the reasons for it; and

(b) allowing at least 20 working days for interested persons to make submissions; and

(c) considering the submissions.

(3) Before recommending the making 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) any recommendations of the Climate Change Commission; and
(k) any other matters that the Minister considers relevant.

84D Climate Change Commission to advise on regulations setting phase-out rates

(1) The Climate Change Commission may recommend that the Minister make regulations under section 84A 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.

(2) The Climate Change Commission may recommend that the Minister make regulations under section 84B if the Commission is satisfied that it is appropriate to do so, having regard to the matters listed in section 84C(3).

(3) The Commission must make a report with its recommendations publicly available after providing it to the Minister.

(4) The Minister must, as soon as practicable, but within 16 weeks, after receiving a report from the Commission—
(a) present a copy of the report to the House of Representatives; and
(b) if the Minister decides not to take action recommended by the Commission, or to take different action than that recommended by the Commission, publish a report giving reasons for departing from the recommendations.

84A Temporary suspension of allocation entitlement for eligible industrial activities

[Repealed]

85 Allocation of New Zealand units in relation to agriculture

(1) A person is eligible for an allocation of New Zealand units for an eligible agricultural activity in respect of a year if the person carries out the activity at any time in the year.

(2) An eligible person is entitled to an allocation for the eligible agricultural activity in respect of the year calculated in accordance with the following formula:

\[ A = LA \times \sum (PDCT \times AB) \]

where—

A is the person’s allocation entitlement for the eligible agricultural activity for the year

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

(a) 0.9–0.95 for the first year in which surrender obligations are applicable for the activity; and
in each year after the first year in which surrender obligations are applicable for the activity, the level of assistance from the previous year less 0.01 (the phase-out rate for an eligible agricultural activity)

\[ \sum \] is the symbol for summation (of each PDCT × AB calculation)

PDCT is the total amount of each product from the eligible agricultural activity produced by the person in the year as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product.

(3) Despite section 86(1)(c), a person who ceases to carry out an eligible agricultural activity in a year may, within 20 working days of ceasing to carry out the activity, apply under section 86 for an allocation for that year calculated in accordance with the formula in subsection (2).

(4) A person—

(a) is not to be treated as having ceased to carry out an eligible agricultural activity for the purposes of subsection (3) and section 59, if the person does not continuously carry out the activity during a year; but

(b) must, if the person does not carry out the eligible agricultural activity for a period of 3 months in a year, be treated as having ceased to carry out the activity in the year.

(5) Subject to subsection (6), an eligible person who has applied for an allocation for a year (the closing year) in accordance with subsection (3) may not apply under section 86 for a further allocation in respect of the closing year.

(6) An eligible person who has applied in accordance with subsection (3) for an allocation in respect of a closing year, but who then recommences carrying out the activity in the closing year may apply under section 86 for an allocation in respect of the part of the year after the date the person recommenced carrying out the activity (and which was not covered by the application made in accordance with subsection (3)) and, for that purpose, subsection (2) applies as if the year were the part of the year from the date the person recommenced carrying out the activity.

85A Temporary suspension of phase-out rates for assistance under sections 81, 83(2), and 85(2). Temporary suspension of phase-out rate for assistance under section 85(2)

(1) The purpose of this section is to suspend temporarily the phase-out rates for assistance under sections 81, 83(2), and 85(2) until the relevant participants face full surrender obligations.

(2) Despite anything in sections 81, 83(2), and 85(2)—

(a) the phase-out 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)—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 during the period—

(i) beginning on the date that this section comes into force; and

(ii) ending, in respect of either or both of those activities, on the close of the date specified for the purpose of this section as the closure date in an Order in Council made by the Governor-General on the recommendation of the Minister; and

(b) the relevant phase-out rate applies for each year after the year of the closure date specified in that order.

(3) Before the Minister may make a recommendation under subsection (2)(a)(ii), the Minister must be satisfied that the relevant participants face full surrender obligations.

(4) This section is repealed on the day after the closure date specified in the Order in Council made under subsection (2)(a)(ii) that specifies the end of all suspensions under this section.

85B Temporary suspension of allocation entitlement for eligible agricultural activities

[Repealed]

86 Applications for allocation of New Zealand units for industry and agriculture

(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, unless this subpart otherwise provides, apply to the EPA, in the period beginning on 1 January and ending with the close of 30 April in a year, for—

(a) a provisional allocation for an eligible industrial activity in respect of that year:

(b) an allocation (other than a provisional allocation for an eligible industrial activity) in respect of the preceding year.

(2) An application under subsection (1) must—

(a) be in the prescribed form; and

(b) contain, as relevant, the applicant’s assessment of,—

(i) in the case of an eligible industrial activity, the person’s—

(A) provisional allocation entitlement in respect of the year calculated in accordance with section 81:

(B) final allocation entitlement in respect of the previous year calculated in accordance with section 83(2):
(C) annual allocation adjustment relating to the previous year calculated in accordance with section 83(3) or 84(4):

(D) closing allocation adjustment for the year calculated as required under section 84(1)(b):

(ii) in the case of an eligible agricultural activity, the person’s—

(A) allocation entitlement in respect of the previous year calculated in accordance with section 85(2); or

(B) if section 85(3) applies, allocation entitlement in respect of the year in which the person ceased to carry out the eligible agricultural activity; and

(c) be accompanied by—

(i) any other information that the EPA may require; and

(ii) the prescribed fee (if any); and

(d) contain the account number of the eligible person’s holding account, required by section 61.

86A Provisional allocation to industry in and after 2013

Despite section 86(1)(a), if an eligible industrial activity is prescribed under section 161A(1)(a) in the year 1 January 2013 to 31 December 2013 or in any subsequent year (the prescribing year), an eligible person who carried out the activity in the year preceding the prescribing year may apply for a provisional allocation for the eligible industrial activity in respect of the prescribing year in the period—

(a) commencing on the date the regulation prescribing the activity as an eligible industrial activity comes into force; and

(b) ending on the date 3 months after the date in paragraph (a).

86B Decisions on applications for allocations of New Zealand units to industry and agriculture

(1) On receipt of an application under section 86, 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 in respect of the application that, if the application relates to a provisional allocation for an eligible industrial activity, must—

(i) include any units to which the person is entitled in respect of an annual allocation adjustment for the previous year; or
(ii) be net of any units required to be deducted from the person’s provisional allocation entitlement in accordance with section 83(6)(a).

(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, in the case of an eligible industrial activity, any adjustment to that allocation that the EPA has made under subsection (1); and

(ii) the person’s right under section 144 to seek a review of the allocation decision; and

(b) direct the Registrar to transfer to the holding account notified in the person’s application the number of units notified under paragraph (a) (as adjusted, in the case of an eligible industrial activity, under subsection (1)).

(b) comply with section 86BA, as long as the number of units allocated is greater than zero, even after any adjustment made under subsection (1).

(3) If the EPA decides under subsection (1) that an applicant is not eligible to receive an allocation in respect of the application, or that the allocation to which the person is entitled in respect of the application is the same as or less than the number of units that the person is liable to repay in respect of an annual allocation adjustment recorded in the application in accordance with section 83(6)(a), then the EPA must notify the applicant of—

(a) the EPA’s decision; and

(b) the reasons for the decision; and

(c) if the result of the decision is that the person is liable to repay more units than the number of units to which the person would have been entitled in respect of the application, the number of units in the shortfall; and

(d) the person’s right under section 144 to seek a review of the allocation decision.

(4) If a person has failed to notify the EPA of an annual allocation adjustment or a closing allocation adjustment when required by section 83(6)(b) or 84(1)(c)(ii), or if the EPA is satisfied that an annual allocation adjustment or closing allocation adjustment notified by a person to the EPA under section 83(6)(b) or 84(1)(c)(ii) is incorrect, then the EPA may make a decision as to the person’s annual allocation adjustment, or closing allocation adjustment or correct annual allocation adjustment or closing allocation adjustment.

(5) 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.

(6) For the purposes of subsection (5),—

(a) the final allocation of a person who received a provisional allocation for an eligible industrial activity is the person’s provisional allocation for the activity in respect of the year adjusted by the annual allocation adjustment for the activity for the year (or closing allocation adjustment, as the case may be); and

(b) 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.

---

86BA  Transfer of allocated units, less any units that must be surrendered or repaid

(1) This section applies to the units allocated to an applicant under section 86B, after any adjustment made under section 86B(1).

(2) The EPA must calculate the following (an applicant’s offset units):

(a) the units (if any) that the applicant was required to, but did not, surrender by a deadline before the start of the year to which the allocation relates;

(b) the units (if any) that the applicant was required to, but did not, repay to a Crown holding account before the start of the year to which the allocation relates.

(3) However, if the offset units exceed the number of allocated units, the offset units are recalculated to equal the number of allocated units by counting units as offset units starting from the units that were required to be surrendered or repaid by the earliest deadlines.

(4) If there are any offset units, the EPA must notify the applicant of the following:

(a) the number of offset units required for surrender;

(b) the number of offset units required for repayment;

(c) that the offset units will be deducted from the transfer of allocated units to the applicant.

(5) The EPA must direct the Registrar to transfer units to achieve the following results:

(a) the offset units required for surrender are transferred to a surrender account designated by the EPA;

(b) the offset units required for repayment are transferred to a Crown holding account designated by the EPA;
86C Reconsideration of allocation decisions

(1) Without limiting section 144, the EPA may reconsider, vary, or revoke any decision made under section 86B if in the EPA's opinion the decision has resulted, or would otherwise result, in a person receiving an incorrect allocation because—

(a) of an error in the calculation of the person’s entitlement to an allocation or liability to repay units under this subpart; or

(b) the person has provided altered, false, incomplete, or misleading information in or with an application.

(2) The EPA may not make a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4) or vary or revoke a decision under subsection (1) after the expiration of 4 years from the end of the year or other period to which the decision relates if the decision, or variation or revocation of the decision, would decrease the number of units allocated to a person.

(3) However, if the EPA is satisfied that a notice under section 83(6)(b) or 84(1)(c)(ii) or application for an allocation, or any other document submitted under section 86, 86E, or 144, was submitted with intent to deceive, the EPA may make a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4) or vary or revoke a decision under subsection (1) at any time so as to decrease the number of units allocated to the person to whom the notice or application related (including decreasing that number to zero).

(4) If the EPA makes a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4) or varies or revokes a decision under subsection (1), the EPA must, as soon as practicable after doing so, notify the person who gave, or should have given, the notice under section 83(6)(b) or 84(1)(c)(ii) or the applicant, as the case may be, of—

(a) the particulars of the decision, or variation or revocation of the decision; and

(b) any grounds or information upon which the decision or variation or revocation of the decision was based; and

(c) the person’s right under section 144 to seek a review of the allocation decision.

(5) If the result of a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4), variation or revocation of an allocation decision under subsection (1), or review under section 144 is that a person allocated units is found to have been allocated and transferred—
(a) units to which the person was not entitled, or to have repaid too few units, the person must within 60 working days of the date of the notice under subsection (4) repay the number of units notified to the person by transferring the units to a Crown holding account designated by the EPA; or

(b) fewer units than the person was entitled to, or to have repaid too many units, the EPA must, as soon as practicable after the date of the notice under subsection (4), direct the Registrar to transfer to the holding account notified in the person’s application (or any other holding account notified by the person) the number of New Zealand units recorded in the notice.

(5A) Any additional allocation made under subsection (5)(b) must be excluded from the calculation of the number of New Zealand units that may be allocated for the purpose of a recommendation made under section 30GA(1)(a).

(6) Section 83(7) applies to repayment of units under subsection (5) as if it were repayment under section 83.

86D Retention of records and materials in relation to allocation

(1) A person who has been allocated New Zealand units for an eligible activity must keep sufficient records to enable the EPA to verify, for any year in respect of which the person received an allocation,—

(a) that the person was an eligible person; and

(b) the person’s calculations of the person’s entitlement to be allocated New Zealand units or liability to repay units under the relevant subsections in sections 81 to 85; and

(c) the total amount of each product produced by the person from the eligible activity in the year, as determined, if relevant, in accordance with regulations made under this Act; and

(d) any other prescribed information.

(2) The records specified in subsection (1)—

(a) must include—

(i) a copy of any application made to the EPA under section 86 or notice given to the EPA under section 83(6)(b) or 84(1)(c)(ii); and

(ii) any information used to prepare the application or notice; and

(b) must be retained for a period of at least 7 years after the end of the year to which the application or notice relates.

86E Minister or EPA or chief executive EPA may require further information for purpose of carrying out functions under subpart

(1) For the purposes of making a determination under section 77 or 78 or a decision under section 86B, the Minister or EPA or chief executive, as appropriate,
a decision under section 86B, the EPA may give to any of the following persons a notice requiring the person to supply information or further information to the Minister or EPA or chief executive of the EPA:

(a) a person who has made an application for an allocation of New Zealand units or notified an annual allocation adjustment or closing allocation adjustment:

(b) a person who has failed to notify an annual allocation adjustment or closing allocation adjustment as required by section 83(6)(b) or 84(1)(c)(ii):

(c) a person who may be affected by a reconsideration of a determination or decision.

(2) A notice under subsection (1) must be given before the determination or decision is made.

(3) A notice under subsection (1) may require the information to be provided that is necessary to determine whether a person is or was—

(a) eligible for an allocation of New Zealand units; or

(b) entitled to the allocation that the person has applied for or received (in relation to an annual allocation adjustment or a closing allocation adjustment).

(4) The Minister or EPA or chief executive may, as appropriate, for the purpose of verifying whether a determination made under section 77 or 78 or a decision made under section 86B was correct or whether it should be reconsidered, give a notice to a person who has been allocated New Zealand units under one of those sections, requiring the person to supply to the Minister or EPA or chief executive any records, data, or other information that the person is required to keep in relation to the allocation.

(4) The EPA may, for the purpose of verifying whether a decision made under section 86B 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.

(5) A person who has received a notice under this section must supply the information requested within the period specified in the notice.

(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 Minister or EPA or chief executive as appropriate, and who—

(a) has applied for an allocation under an allocation plan or under section 86 is not entitled to receive an allocation under that plan or in respect of that application; or
has been allocated but not yet received some or all units allocated to the person under an allocation plan is not entitled to be transferred any units or any further units allocated to the person under the plan.

(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.

86F Balance of units at end of true-up period or other balance date

[Repealed]

Subpart 3—Environmental Protection Authority

General administrative provisions

87 Functions of EPA

(1) The functions of the EPA are to—

(a) keep a register under section 56 of persons who carry out activities and a register of persons who register under section 57 as participants; and

(b) receive and collate the data and other information provided by participants under this Part and Part 5—the ETS participant provisions; and

(ba) administer allocations relating to industry and agriculture in accordance with sections 80 to 86E; and

(c) approve the use of unique emissions factors by participants in accordance with section 91; and

(d) direct the Registrar to transfer New Zealand units to which participants are entitled for removal activities to participants’ holding accounts; and

(e) ensure participants and eligible persons comply with this Part and Part 5—the ETS participant provisions and to take any action that may be appropriate to enforce those provisions and the provisions of any regulations made under this Part; and

(f) publish information in accordance with section 89; and

(g) issue emissions rulings to help persons meet their obligations under this Part and Part 5—the ETS participant provisions.

(2) The EPA must comply with any direction that the Minister gives under section 88(1).

(3) For the avoidance of doubt, the EPA undertakes the functions described in subsection (1) on behalf of the Crown.

87A Delegation by EPA

(1) The EPA must not delegate its power to appoint the Registrar under section 11.
In all other respects, section 73 of the Crown Entities Act 2004 applies, except that subsection (1) of that section applies as if paragraph (d) were repealed and the following paragraph substituted:

(d) a person, or an office holder in a department of the Public Service, approved by the entity’s responsible Minister:

88 Directions to EPA

(1) The Minister may give general directions to the EPA in relation to the EPA’s exercise of powers and performance of functions under this Part, Part 5, or any regulations made under this Part or Part 5; the ETS participant provisions or any regulations made under those provisions.

(2) Subsection (1) does not authorise the Minister to give directions about the exercise of powers and performance of functions in relation to a particular person.

(3) As soon as practicable after giving a direction under subsection (1), the Minister must—

(a) publish a copy of the direction in the Gazette; and

(b) make a copy of the direction accessible via the Internet site of the EPA; and

(c) present a copy of the direction to the House of Representatives.

(4) Before giving a direction under subsection (1), the Minister must comply with section 115(1) of the Crown Entities Act 2004.

89 EPA to publish certain information

(1) The EPA must publish the following information in accordance with subsection (2):

(a) in respect of each activity listed in Schedule 3, the total number of participants—

(i) registered under section 56; and

(ii) removed from the register under section 59; and

(b) in respect of each activity listed in Schedule 4, the total number of participants—

(i) registered under section 57; and

(ii) removed from the register under sections 58(4) and 59; and

(c) the total number and type of activities reported in emissions returns; and

(d) the total quantity of emissions and removals reported in emissions returns; and

(e) subject to subsections (3) and (4), the total quantity of emissions by activity and the total quantity of removals by activity reported in emissions returns; and
(f) the number of participants who failed to comply with their obligation to—
   (i) submit an emissions return under section 65(1), 118(2), 189(4), 191, or 193—required by this Act; or
   (ii) surrender or repay units under section 65(4), 118(5), 123(3) or (6), 125, 189, 191, or 193—as required by this Act; and

(g) the total number of units surrendered; and

(h) the total number of New Zealand units transferred for removal activities; and

(i) the total number of New Zealand units allocated under subpart 2 less any units repaid; and

(j) the total sum of money paid to a Crown Bank Account in accordance with section 178A(2)(a)(ii) or (iii); and

(k) the total sum of money paid by the EPA in accordance with section 178A(2)(b)(ii) or (iii).

(1A) The EPA must publish a list each year that records—

(a) each penalty imposed in that year under—
   (i) section 134; and
   (ii) sections 134A to 134D, if the EPA is satisfied that the penalty was imposed for behaviour that was grossly careless or knowing; and

(b) each penalty still owing at the end of the year that was imposed in a previous year under—
   (i) section 134; and
   (ii) sections 134A to 134D, if the EPA is satisfied that the penalty was imposed for behaviour that was grossly careless or knowing.

(1B) The list must contain the following details in respect of each penalty:

(a) the name of the person on whom the penalty was imposed;

(b) the section under which the penalty was imposed;

(c) the amount of the penalty;

(d) the date that the last payment for the penalty was due and, if the penalty has been paid in full, the date on which the penalty and any interest on it was paid in full;

(e) in the case of a penalty imposed under section 134, the provision under which the person was liable to surrender or repay units;

(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.

(2) The EPA—
(a) must publish the information specified in subsection (1) to (1B) as soon as practicable after the end of the reporting year; and
(b) may publish the information specified in subsection (1) to (1B), in whole or in part, at any other time and in whatever manner and format that the EPA considers appropriate.

(2A) In this section, reporting year means a 12-month period starting on 1 July of one year and ending with the close of 30 June of the following year.

(3) The EPA is not required to publish the information required under subsection (1)(e) in respect of an activity or the information required under subsection (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.

(4) The EPA is only required to publish the total quantity of emissions and the total quantity of removals in aggregate for the activities in Part 1 of Schedule 4.

(3) The EPA is required to publish only—
(a) the total quantity of emissions, and the total quantity of removals, in aggregate for standard forestry; and
(b) the total quantity of emissions, and the total quantity of removals, in aggregate for permanent forestry.

Amendment note:
This section is proposed to be amended further on 31 December 2020 by clause 223 of the Climate Change Response (Emissions Trading Reform) Amendment Bill, and by Order in Council or on 1 January 2023 by clause 226 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

89A EPA to publish participant data on emissions and removals

(1) The EPA must publish, for each participant or consolidated group from which it receives emissions returns,—
(a) the name of the participant, or names of the participants in the consolidated group; and
(b) the net emissions or removals set out in the participant’s or group’s return or returns, broken down by activity if the return relates to more than 1 activity; and
(c) the period to which the return or returns relate.

(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 and in whatever manner and format that the EPA considers appropriate.

90 EPA may prescribe form of certain documents

(1) The EPA may, for the purposes of this Part and Part 5 the ETS participant provisions and Part 2, prescribe—

(a) the form and electronic format of any forms, applications, returns, information accompanying any applications or returns, or other documents that are not otherwise prescribed in regulations made under this Act; and

(b) different forms or formats for different classes of participants or different activities; and

(b) different forms or formats for different classes of participant or person or for different activities or purposes; and

(c) the manner in which any application, return, information, or other document must be submitted or notified under this Part or Part 5 the ETS participant provisions or Part 2 if this is not otherwise prescribed in regulations.

(2) The EPA must publish any form or format prescribed under subsection (1) via the Internet site of the EPA.

(3) The production by the EPA of any document purporting to be a prescribed form or an extract from a prescribed form or a copy of a form or extract is, in all courts and in all proceedings, unless the contrary is proved, sufficient evidence that the form or electronic format was prescribed.

(4) To avoid doubt, if the EPA prescribes an electronic form or format under subsection (1), the EPA may require any signature on that form or that relates to that format to be an electronic signature.

91 Approval of unique emissions factors

(1) The EPA may approve the use by a participant of a unique emissions factor when calculating emissions or removals from an activity under section 62(b) section 62(1)(b) if—

(a) regulations made under section 164 provide a mechanism for participants to apply for approval to use a unique emissions factor for the activity; and

(b) the EPA is satisfied that the unique emissions factor that the participant has applied to use meets any requirements prescribed in regulations made under section 164.

(2) An approval under subsection (1)—

(a) may be subject to the conditions that the EPA considers appropriate; and

(b) ceases to have effect on the earliest of the following dates:
(i) the date of a material change in any of the information or factors on which the approval is based; or
(ii) the date of a material change to this Act or to any regulations to which the approval relates; or
(iii) the date on which any of the conditions to which the approval is subject cease to be met or complied with.

(3) If the EPA approves the use of a unique emissions factor under subsection (1), the EPA must—
(a) notify the applicant of the approval; and
(b) publish in the Gazette—
(i) the name of the participant; and
(ii) a description of the activity; and
(iii) the details of the unique emissions factor the EPA has approved the participant to use when calculating emissions or removals for the activity.

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 from the date specified by the notice in the Gazette, even if that date has passed.

92 Recognition of verifiers

(1) The EPA may, in accordance with any regulations made under section 163, recognise a person or organisation with the prescribed expertise, technical competence, or qualifications as a person or organisation that may undertake verification functions for the purposes of section 62(a) section 62(1)(a) and (c) or
regulations made under section 164 relating to the process for approval of a unique emissions factor.

(2) A person or organisation may be recognised by the chief executive as able to verify information or unique emissions factors in respect of—
   (a) 1 or more types of data or information or calculations of types of emissions or removals:
   (b) 1 or more activities in Schedule 3 or 4.

(3) The EPA may suspend or revoke any recognition given under this section in accordance with regulations made under section 163.

Verification and inquiry

93 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 Part (which relate to verification and inquiry about compliance with the ETS participant provisions).

(2) If the EPA delegates the power to appoint a person as an enforcement officer to the chief executive of a department of the Public Service, the chief executive of the department may appoint a person as an enforcement officer only if the person is employed by a government department, in which case the chief executive must employ the person under the State Sector Act 1988.

(3) The EPA must supply each enforcement officer with a warrant of authorisation that clearly states the powers and functions of the officer.

(4) An enforcement officer who exercises, or purports to exercise, a power conferred on the enforcement officer under this Act must carry and produce, if required to do so,—
   (a) his or her warrant of authorisation; and
   (b) evidence of his or her identity.

(5) An enforcement officer must, on the termination of the enforcement officer’s appointment, surrender his or her warrant to the chief executive.

(6) [Repealed]

94 Power to require information

(1) The EPA, the chief executive, or an enforcement officer may, by notice, require a person to provide any information that is reasonably necessary for the purposes of—
   (a) ascertaining whether a person is complying, or has complied, with this Part and Part 5 the ETS participant provisions; or
   (b) ascertaining whether the EPA or the chief executive, as appropriate, should exercise any powers under this Part or Part 5.
ascertaining whether, or how, the EPA or the chief executive, as appropriate, should exercise any powers under the ETS participant provisions.

(2) The information required to be provided under subsection (1) must,—

(a) if required by the EPA, the chief executive, or an enforcement officer, be accompanied by a statutory declaration attesting to the truthfulness of the information provided; and

(b) be provided—

(i) in the form specified by the EPA, the chief executive, or an enforcement officer; and

(ii) within any reasonable time specified in the notice requiring the information; and

(iii) free of charge.

95 Power to inquire

(1) For the purpose of obtaining information for a purpose specified in section 94(1), or any other information required for the purposes of the administration or enforcement of this Part or Part 5—the ETS participant provisions, the EPA or the chief executive may require a person to—

(a) appear before the EPA, or the chief executive, or an enforcement officer at a time and place that is specified in the notice to give evidence; and

(b) produce any document or class of documents in the person’s possession or under the person’s control that is specified in the notice.

(2) The EPA, or the chief executive, or enforcement officer may require the evidence to be given on oath and either orally or in writing, and for that purpose the EPA, or the chief executive, or enforcement officer may administer an oath.

96 Inquiry before District Court Judge

(1) For the purpose of obtaining information for a purpose specified in section 94(1), or any other information required for the purposes of the administration or enforcement of this Part or Part 5—the ETS participant provisions, the EPA or the chief executive, if the EPA or the chief executive, as appropriate, considers it necessary, may apply in writing to a District Court Judge to hold an inquiry under this section.

(2) For the purposes of an inquiry under this section,—

(a) the District Court Judge—

(i) may, with respect to any matter that is relevant to the subject matter of the inquiry, summon and examine on oath all persons whom the EPA, the chief executive, or any other interested person requires to be called and examined; and

(ii) has the same jurisdiction and authority regarding the summoning and examination of a person as the Judge would have in respect of
a witness in a civil action within the Judge’s ordinary jurisdiction; and

(b) the person summoned and examined has all the rights and is subject to all the liabilities that the person would have and be subject to if the person were a witness in a civil action within the Judge’s ordinary jurisdiction.

(3) The EPA, the chief executive, and any person materially affected by the subject matter of the inquiry may be represented by a barrister or solicitor, who may examine, cross-examine, and re-examine, in accordance with ordinary practice, any person summoned under subsection (2).

(4) Every examination under this section must take place in chambers.

(5) The statement of every person examined—

(a) must be—

(i) recorded in writing and signed by the person in the presence of the District Court Judge; and

(ii) delivered to the chief executive; and

(b) does not form part of the records of the court.

97 No criminal proceedings for statements under section 95 or 96

(1) No person summoned or examined under section 95 or 96 is excused from answering a question on the ground that the answer may incriminate the person or render the person liable to any penalty or forfeiture.

(2) The testimony of a person examined is not admissible as evidence in criminal proceedings against the person, except on a charge of perjury in relation to the testimony.

98 Expenses in relation to inquiries

The EPA or the chief executive may pay, or a District Court Judge may order the EPA or the chief executive to pay, to any person who has appeared before the EPA, or the chief executive, or an enforcement officer under section 95 or the District Court Judge under section 96 the sum that in the EPA’s, or the chief executive’s, or the Judge’s opinion, as the case may be, is reasonable in respect of that person’s travelling and other expenses.

99 Obligation to maintain confidentiality

(1) This section applies—

(a) to the chief executive, the EPA, an enforcement officer, and any other person who performs functions or exercises powers of the chief executive, the EPA, or an enforcement officer under this Part and Part 5 the ETS participant provisions; and
(2) A person to whom this section applies—

(a) must keep confidential all information that comes into the person’s knowledge when performing any function or exercising any power under this Part and Part 5 the ETS participant provisions; and

(b) must not disclose any information specified in paragraph (a), except—

(i) with the consent of the person to whom the information relates or of the person 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 exercise of powers conferred by this Part or for the administration of this Act; or

(iiiia) for the purposes of, or in connection with, reporting requirements of the Public Finance Act 1989; or

(iiiib) to the Climate Change Commission for the purpose of assisting the Commission to perform its functions and duties and exercise its powers under this Act; 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 any obligation under the Convention or the Protocol international climate change obligations.

(3) A person to whom this section applies commits an offence under section 130 if the person knowingly contravenes this section.

(4) Nothing in subsection (2) may be treated as prohibiting the chief executive or the EPA from—

(a) providing or publishing general guidance in relation to the operation of this Part and Part 5 the ETS participant provisions; or

(b) with the prior approval of the Minister, preparing and supplying statistical information to any person in a form that does not identify any individual; or

(e) providing information to any person about whether any forest land is considered by the chief executive or the EPA to be pre-1990 forest land, pre-1990 offsetting forest land, or post-1989 forest land, or has been declared to be exempt land by the chief executive or the EPA.

(c) providing information to any person about whether—

(i) any land has a certain forestry classification or is exempt land; or
they consider any land to be land that could be given any particular forestry classification available under section 196A(a).

100 Power of entry for investigation

(1) An enforcement officer may enter land or premises (excluding any dwelling-house or marae) at any reasonable time during the ordinary hours of business to investigate whether a person is complying with this Part or Part 5—the ETS participant provisions.

(2) During an investigation, an enforcement officer may—

(a) require the production of, inspect, and copy any documents:

(b) take samples of water, air, soil, organic matter, or any other thing:

(c) carry out surveys, investigations, tests, inspections, or measurements (including those that involve leaving measuring equipment on the land or premises):

(d) demand from the occupier any other information that the enforcement officer may reasonably require for the purpose of determining whether a person is complying with this Part and Part 5—the ETS participant provisions.

(3) An enforcement officer who exercises the power of investigation under this section must give the occupier or owner reasonable notice of the enforcement officer’s intention to enter the land or premises, unless doing so would defeat the purpose of the entry.

(4) A notice given under subsection (3) must specify—

(a) when entry is to be made; and

(b) the purpose for which the entry is required; and

(c) that the entry is authorised under this section.

(5) An enforcement officer who exercises the power of investigation under this section may be accompanied by any person or persons reasonably necessary to assist the enforcement officer with the investigation.

(6) A person who provides assistance under subsection (5) may exercise the powers provided to enforcement officers under subsection (2)(a) to (c).

(7) Nothing in this section limits the privilege against self-incrimination.

101 Applications for warrants

(1) A District Court Judge, Justice of the Peace, Community Magistrate, or Registrar of any court who, on written application made on oath by an enforcement officer authorised by the EPA, is satisfied that there are reasonable grounds to believe that there are in or on or under or over any land, premises, dwelling-house, or marae any documents or other records or things (including samples) that may be evidence of the commission of an offence under section
129, 132, or 133 may issue a warrant authorising the entry and search of the land, premises, dwellinghouse, or marae.

(2) Every search warrant may authorise the enforcement officer executing the warrant to do any of the following things:

(a) enter and search the land, premises, dwellinghouse, or marae, at any time that is reasonable in the circumstances during the ordinary hours of business, within—

(i) 10 working days of the date of the warrant; or

(ii) if the Judge or other person issuing the warrant is satisfied that special circumstances justify a longer period, any period of up to 20 working days that is specified in the warrant:

(b) seize any document or other thing that the enforcement officer has reasonable cause to suspect may be evidence of the commission of an offence under section 129, 132, or 133:

(c) take samples of water, air, soil, organic matter, or any other thing:

(d) use the assistance of any person that is reasonably necessary in the circumstances:

(e) use any force to enter (whether by breaking doors or otherwise) that is reasonable in the circumstances:

(f) carry out surveys, investigations, tests, inspections, or measurements (including those that involve leaving measuring equipment on the land or premises).

(3) An enforcement officer may not enter a dwellinghouse or marae unless that enforcement officer is accompanied by a constable.

(4) A person who provides assistance under subsection (2)(d) may exercise the powers provided to enforcement officers under subsection (2)(a), (b), (c), and (f).

102 Proof of authority must be produced

If powers are exercised under section 100 or 101, an enforcement officer must, on initial entry, and if asked by the occupier at any time afterward, produce for inspection—

(a) the enforcement officer’s warrant of authorisation and evidence of his or her identity; and

(b) any notice given under section 100(3) or a search warrant issued under section 101, as the case may be.

103 Notice of entry

(1) If, when powers are exercised under section 100 or 101, the occupier is not present, the enforcement officer must, in a prominent place, attach a written notice that states—
(a) the date and time of the entry or search; and
(b) the purpose of the entry or search; and
(c) the name and phone number of the enforcement officer; and
(d) the right, under the Official Information Act 1982, to access documentation relating to the application for a search warrant and the exercise of the search power; and
(e) an address at which inquiries may be made.

(2) If the enforcement officer removes, or has removed, any document or other thing from any land, premises, dwellinghouse, or marae, the enforcement officer must hand to the occupier, or attach in a prominent place, a notice that—
(a) lists all of the items taken; and
(b) states—
   (i) where those items are being held; and
   (ii) if they are being held in 2 or more places, which items are being held at which place; and
(c) provides information about—
   (i) the procedures to be followed to initiate a claim that privileged or confidential material has been seized; and
   (ii) access to and the disposition of seized items.

104 **Information obtained under section 100 or 101 only admissible in proceedings for alleged breach of obligations imposed under this Part and Part 5-ETS participant provisions**

No document or other information obtained from a person under section 100 or 101 is admissible against that person in any criminal or civil proceedings, other than proceedings for an alleged breach of an obligation imposed under this Part or Part 5-ETS participant provisions.

105 **Return of items seized**

Section 199 of the Summary Proceedings Act 1957 applies, with the necessary modifications, to any property seized or taken by an enforcement officer as if—
(a) references in that section to a constable were references to an enforcement officer; and
(b) the reference in that section to section 198 of that Act were a reference to section 100 or 101 of this Act.

106 **Protection of persons acting under authority of this Part**

No enforcement officer or person called upon to assist an enforcement officer who does an act, or omits to do an act, when performing a function or exercising a power conferred on that person by this Part is under any civil or criminal
liability in respect of the act or omission, unless the person has acted, or omitted to act, in bad faith or without reasonable cause.

Emissions rulings

107 Applications for emissions rulings

(1) A person may apply to the EPA for an emissions ruling in respect of 1 or more of the following matters:

(a) whether something that the person—
   (i) is doing is an activity listed in Schedule 3 or 4; or
   (ii) proposes to do would be an activity listed in Schedule 3 or 4;

(b) whether the person 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;

(c) the correct application of any provision contained in regulations made under section 163(1)(a) to (e) in respect of a particular matter specified in the person’s application;

(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, 185A, 186F, 194EG, 194LA, 194TA, 194UC, 196G, 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;

(d) any other matters prescribed in regulations made under section 168(1)(b).
Every application under subsection (1) must—

(a) be in the prescribed form; and
(b) state the name and address of the applicant; and
(c) specify the matter on which the applicant seeks a ruling; and
(d) specify the applicant’s opinion as to what the ruling should be; and
(e) contain, or have attached, all information that is relevant to a proper consideration of the application; and
(f) be accompanied by the prescribed fee (if any).

The EPA may request any further information from an applicant that the EPA considers necessary to assist in the consideration of the application.

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.

108 Matters in relation to which EPA may decline to make emissions rulings

(1) The EPA may not make an emissions ruling—

(a) with respect to a provision that authorises or requires the EPA to—

(i) impose or remit a penalty; or
(ii) inquire into the correctness of any return or other information supplied by any person; or
(iii) prosecute any person; or
(iv) recover any debt owing by any person; or
(b) if the information submitted with the application for the ruling, including (but not limited to) information submitted under section 107(3) section 107A(1), raises questions of fact that the EPA would need to determine in order to make the ruling.

(2) The EPA may decline to make an emissions ruling if—
(a) the EPA considers that the correctness of the ruling would depend on which assumptions were made about a future event or other matter; or
(b) the matter on which the ruling is sought is subject to a review or appeal, or is the subject of proceedings, whether in relation to the applicant or any other person; or
(c) the applicant has outstanding unpaid fees relating to an earlier emissions ruling application; or
(d) the EPA considers the application is frivolous or vexatious; or
(e) the matter on which the ruling is sought concerns an obligation to surrender units that are already due and payable, unless the application is received before the obligation arises; or
(f) an assessment or amendment relating to the same person, activity, and period to which the proposed ruling would apply has been made (unless the application is received by the EPA before the date an assessment or amendment is made); or
(g) in the EPA’s opinion—
(i) the EPA has insufficient information to make the ruling but subject to section 107A; or
(ii) it would be unreasonable to make a ruling in view of the resources available to the EPA.

109 Making of emissions rulings

(1) The EPA must make an emissions ruling regarding the matter in respect of which a ruling is sought under section 107 applied for as soon as practicable after the receipt of—
(a) a properly completed application for a ruling; and
(b) all information that the EPA considers relevant to the consideration of the application, including information requested under section 107(3) section 107A.

(2) Subject to section 114(2), a ruling comes into effect on the day on which it is made.

(3) A ruling may be made subject to any conditions that the EPA considers appropriate.
(4) Subsection (1) is subject to section 108.

(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 of standard forestry 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.

110 Notice of emissions rulings
The EPA must, as soon as practicable, notify the applicant of—
(a) an emissions ruling, together with the reasons for the ruling, and the conditions (if any) to which the ruling is subject; or
(b) a decision to decline to make an emissions ruling, together with the reasons for the decision.

111 Confirmation of basis of emissions rulings
At any time after an emissions ruling is made, the EPA may, by notice, require an applicant to satisfy the EPA, within 20 working days of receipt of the notice, and in a manner that the EPA considers appropriate, that—
(a) the information on which the emissions ruling is based remains accurate; and
(b) the conditions (if any) to which the ruling is subject, have been, and continue to be, complied with.

112 Notifying EPA of changes relevant to or failure to comply with emissions rulings
(1) A person must, as soon as practicable, notify the EPA of any material change that is relevant to the application if the person—
(a) has made an application for an emissions ruling under section 107; and
(b) becomes aware of a material change relating to the application before the emissions ruling is made by the EPA.

(2) A person who has obtained an emissions ruling under section 109 must, as soon as practicable, notify the EPA of—
(a) any material change that is relevant to the ruling;
(b) any failure to comply with any of the conditions of the ruling.
(3) The notification that a person provides under subsection (1) or (2) must state the date on which the person became aware of the material change or the failure to comply.

113 Correction of emissions rulings

(1) The EPA may amend an emissions ruling to correct any error that the EPA is satisfied is contained in the ruling.

(2) The EPA must, as soon as practicable after making a correction, notify the applicant of the corrected ruling.

(3) The correction to a ruling applies to the applicant from the date on which notice of the corrected ruling is given to the applicant.

(4) Despite subsection (3), if the corrected ruling has the effect of—

(a) increasing the number of units that a person is required to surrender, or decreasing the number of New Zealand units that a person is entitled to receive, in respect of a year, then the ruling as given prior to correction under this section must be applied to that year; or

(b) decreasing the number of units that a person is required to surrender, or increasing the number of New Zealand units that a person is entitled to receive, in respect of a year, then the corrected ruling must be applied to that year.

114 Cessation of emissions rulings

(1) An emissions ruling ceases to have effect on the earliest of the following dates:

(a) the date of a material change in any of the information or facts on which the ruling is based; or

(b) the date of a material change to this Act or to any regulations relevant to the ruling; or

(c) the date on which any of the conditions to which the ruling is subject cease to be met or complied with; or

(d) the date of a failure to satisfy the requirements of the EPA under section 111.

(2) An emissions ruling does not come into effect if any information on which it is based is not accurate in all material respects.

115 Appeal from decisions of EPA

(1) An applicant who is dissatisfied with an emissions ruling, or a decision to decline to make an emissions ruling, may, within 20 working days of the date on which notice of the ruling or decision is given, appeal to the District Court against the ruling or decision.

(2) The District Court may confirm, reverse, or modify the emissions ruling or decision appealed against.
(3) An emissions ruling or decision appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.

116 Effect of emissions rulings

(1) An emissions ruling is conclusive evidence of the determination of the matter in respect of which a ruling is sought under section 107 that is ruled on.

(2) If the EPA makes an emissions ruling under section 109,—
   (a) the ruling applies to the matter in relation to which the ruling was sought that is ruled on; and
   (b) if the applicant complies with the ruling, the EPA must apply this Act to that matter in accordance with the ruling.

(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).

(3) This section is subject to sections 113 and 114 and any decision of the District Court under section 115(2).

117 EPA may publish certain aspects of emissions rulings

(1) For the purpose of providing general guidance about the application of this Part or Part 5—the ETS participant provisions, the EPA may, after making an emissions ruling, publish information that relates to the ruling.

(2) The EPA may not publish any information under subsection (1) that identifies any person to whom the ruling relates.

(3) No person may treat, or rely on, the information published under subsection (1) as an emissions ruling with the effect specified by section 116.

Emissions returns

118 Submission of final emissions returns

(1) Subsection (2) applies to the following persons:
   (a) a person who the EPA believes is about to—
      (i) cease carrying out an activity listed in Schedule 3 or 4 in relation to which the person is a participant; and
      (ii) leave New Zealand:
   (b) a participant who has ceased to carry out any activities in New Zealand:
   (ba) a participant who has given the EPA notice under section 59 that the participant has ceased, or will cease, to carry out any activities for the remainder of the year and the whole of the following year:
   (c) the executors or administrators of a deceased participant:
(d) a participant who has become bankrupt or has been put into liquidation.

(2) The EPA may, at any time, require a person to whom subsection (1) applies to submit a final emissions return in relation to a specified activity listed in Schedule 3 or 4.

(3) Any of the following persons may, at any time, submit a final emissions return in relation to a specified activity listed in Schedule 3 or 4:

(a) a person who has—
   (i) ceased to carry out an activity listed in Schedule 3 or 4 in relation to which the person was a participant; and
   (ii) left, or is about to leave, New Zealand:

(b) a participant who has ceased to carry out any activities in New Zealand:

(c) the executor or administrator of a deceased participant:

(d) a participant who has become bankrupt or has been put into liquidation.

(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.

(4) A final emissions return submitted under subsection (2) or (3) must—

(a) contain all of the information required in an annual emissions return under section 65(2), but only in respect of the following periods, as relevant:
   (i) if the return is submitted in response to a requirement of the EPA under subsection (2), the period specified by the EPA:
   (ii) if the return is made under subsection (3)(a) or (b), the period—
      (A) beginning on the later of 1 January in the year in which the return is submitted, or the day after the end of the period covered by the last emissions return submitted by the person for the activity; and
      (B) ending on the day the person ceased to carry out the specified activity, or the last of the specified activities covered by the return:
   (iii) if the return is made under subsection (3)(c) or (d), the period determined by the submitter; and

(b) be submitted in accordance with section 65(3).

(5) Following the submission of a final emissions return under this section, the person submitting the return must, within 20 working days, surrender the number of units in the assessment under section 65(2)(c)(i).

(6) Despite anything in subsection (3),—
(a) a person who meets the conditions in that subsection, and who is (at the
time of meeting those conditions) a member of a consolidated group,
may not submit a final emissions return; and

(b) the nominated entity of the consolidated group of which the person is a
member may not submit a final emissions return in respect of the person.

(7) To avoid doubt, a person who submits a final emissions return in respect of a
specified activity under this section—

(a) is not required to submit an annual emissions return under section 65
that covers the activity for any period covered by the return submitted
under this section; but

(b) must, if the final emissions return does not cover the full period in which
the activity was carried out by the participant in a year, submit an annual
emissions return under section 65 in respect of the activity that covers
any part of the year in which the activity was carried out by the partici-
pant that is not covered by the return submitted under this section.

119 Power to extend date for emissions returns

The EPA may extend the time for the submission of an emissions return by a
period of no more than 20 working days if—

(a) the participant has applied for an extension by the date upon which the
emissions return is due; and

(b) the EPA is satisfied that the participant is unable to submit the required
emissions return by the due date.

120 Amendment to emissions returns by EPA

(1) Subject to section 127, if the EPA is satisfied that the information contained in
an emissions return is incorrect, the EPA may, at any time, amend the emis-
sions return and any assessment of the participant’s liability to surrender units
or entitlement to receive New Zealand units in the emissions return as the EPA
thinks fit.

(2) Information contained in an emissions return may be incorrect, for example,
because it is based on an incorrect unique emissions factor that was approved
for the participant under section 91.

(3) If the EPA proposes to amend a person’s emissions return, the EPA must notify
the person of that proposal as soon as practicable.

121 Assessment if default made in submitting emissions return

(1) This section applies if—

(a) a participant fails to submit an emissions return when required to do so
under this Act; or

(b) the EPA has reason to believe that a person is a participant who should
have submitted an emissions return, but did not.
(2) If this section applies, the EPA may make an assessment of the matters that should have been in the person’s emissions return.

122 Amendment or assessment presumed to be correct

An amendment made to an emissions return under section 120, or an assessment made under section 121, must be taken to be correct unless, on review or appeal, a different amendment or assessment is made.

123 Effect of amendment or assessment

(1) If the EPA makes an amendment under section 120 or an assessment under section 121, the EPA must, as soon as practicable after making the amendment or assessment, notify the participant of—

(a) the particulars of the amendment or assessment; and
(b) any grounds or information upon which the amendment or assessment was based; and
(c) the right of the person to seek a review of the decision under section 144.

(2) A notice under subsection (1) must, if relevant, be accompanied by a penalty notice under section 134(3)(b), section 134A, or 134C.

(3) If the amendment or assessment results in a liability for the person to surrender units or any additional units, the participant must surrender those units within 60 working days of the date of the notice under subsection (1).

(4) If the amendment shows that a participant has surrendered too many units, the EPA must, within 20 working days of the date of the notice under subsection (1), arrange for reimbursement to the participant, in accordance with section 124, of the number of units incorrectly surrendered.

(5) If the amendment or assessment results in an entitlement for a participant to receive New Zealand units for the participant’s removal activities, the EPA must direct the Registrar to transfer the number of New Zealand units to which the participant is entitled to the participant’s holding account.

(6) If the amendment shows that a participant was transferred too many New Zealand units for the participant’s removal activities, the participant must, within 60 working days of the date of the notice under subsection (1), repay the number of units to which the amendment shows the participant was not entitled by transferring them to a Crown holding account designated by the EPA.

(7) Units repaid by any person under subsection (6) must be of a type that may be transferred to a surrender account at the time the unit is repaid.

(8) The EPA is not required to meet the time frame in subsection (4) if consultation under section 124(3) on the units to be reimbursed makes this impracticable.
124 Reimbursement of units by EPA

(1) If the EPA is required to arrange for the reimbursement of units to a person under section 123(4), 126(2), 138(2), 186H(4), or 189(7), the EPA must direct the Registrar to transfer units to the person in accordance with subsection (2).

(2) If the reimbursement is of—
   (a) New Zealand units or approved overseas units, 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; or
   (b) Kyoto units, the EPA must direct the Registrar to transfer the applicable number and type of Kyoto units from the appropriate surrender account or Crown holding account to the person’s holding account.

(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.

(3) The EPA must take into account the views of the person to whom units will be reimbursed about the type of units to be reimbursed when determining what units to reimburse.

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 a provision in Part 4 or 5 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 the units referred to in the notice in accordance with subsection (2).

(2) A person who receives a notice under subsection (1) must—
   (a) repay any units transferred in error that are still in the person’s holding account, or are otherwise under the person’s control, by transferring those units as soon as practicable to the Crown holding account designated in the notice; and
   (b) if not all the units transferred in error are repaid under paragraph (a), repay, within 30 working days of the date of the notice, the outstanding number of units by transferring units to the Crown holding account designated in the notice.

(3) Units repaid by any person under subsection (2)(b) must be of a type that may be transferred to a surrender account at the time the unit is repaid.

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 after they are repaid.

126 Obligation to surrender or repay units not suspended by review or appeal

(1) The obligation to surrender or repay units under section 123 or 125 is not suspended by any review or legal proceedings.

(2) If the applicant for a review or the appellant in proceedings is successful in the review or the proceedings, the EPA must arrange for the reimbursement to the applicant or appellant of the number of units surrendered or repaid in excess of those that are determined to be required to be surrendered or repaid.

(3) However, any obligation on the EPA under subsection (2) is suspended pending the outcome of any appeal filed by the EPA under section 146.

127 Time bar for amendment of emissions returns

(1) If a participant has complied with the participant’s obligation to surrender units in relation to an emissions return submitted under required or permitted by—

(a) any section except section 189 or 193 those specified in paragraph (b),

the EPA may not amend the emissions return, or the assessment made by the participant of the units to be surrendered or received, after the expiration of 4 years from the end of the year or other period in respect of which the emissions return was made, or in the case of a return under section 187 or 191 required by section 187 or 191BA, from the date of the submission of the emissions return, if the amendment would—

(i) increase the number of units required to be surrendered by the participant; or

(ii) alter the number of New Zealand units that the participant is entitled to receive for removal activities:

(b) section 189 or 193 section 189AA, 189AB, 192, 194CA, 194DA, 194GA, 194KC, 194NA, or 194QB, the EPA may not amend the emissions return, or the assessment made by the participant of the units to be surrendered or received, after the expiration of 7 years from the end of the year or other period in respect of which the emissions return was made if the amendment would—

(i) increase the number of units required to be surrendered by the participant; or

(ii) alter the number of New Zealand units that the participant is entitled to receive for removal activities.
(2) However, 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—

(a) increase the number of units required to be surrendered by the participant;

(b) decrease the number of New Zealand units to which the participant is entitled in respect of removal activities.

(3) Without limiting subsection (2), that subsection will apply 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.

128 Amendments and assessments made by electronic means

Any amendment or assessment made by the EPA for the purpose of this Act that is made automatically by a computer or other electronic means in response to or as a result of information entered or held in the computer or other electronic medium—

(a) must be treated as an amendment or assessment made by or under the properly delegated authority of the EPA; and

(b) is not invalid by virtue of the fact that it is made automatically by such means.

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 194JB or 194QB (the notice provision).

(2) The EPA may,—

(a) if no notice has been given, prepare the notice that ought to have been given (including any emissions return, new unit balance report, or other information that should have accompanied it); or

(b) if a notice has been given but is not complete, complete the notice (including by preparing or completing any emissions return, new unit balance report, or other information that should have accompanied it).

(3) If the EPA has insufficient information to enable it to do so, it may make assumptions or estimates to enable the notice or accompanying information to be prepared.

(4) If the notice provision requires 2 or more participants to give a joint notice and a notice is given by some but not all of them,—
(a) the EPA may accept it as a notice from the participants giving it and deal with it accordingly; and
(b) if the EPA does so, the other participants are to be treated as having failed to give the required notice.

(5) 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.

(6) If the participant gives or corrects the required notice by that deadline, it must be treated as having been given in accordance with the notice provision.

(7) 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.

(8) Despite subsection (2), for a notice required by section 194JB, the EPA cannot identify any land as excess forest land.

**128B Effects of EPA acting after participant fails to give notice**

(1) Anything prepared by the EPA acting under section 128A—

(a) must be taken to be correct; and
(b) is to be treated as if it had been given to the EPA—

(i) by the participant who was required to give it; and
(ii) in accordance with the notice provision; and
(iii) on the last day on which it could have been given under that provision.

(2) As soon as practicable after taking action under section 128A, the EPA must notify the participant of the following:

(a) the action taken (including a copy of anything prepared by the EPA) and the reasons for taking it; and
(b) the participant’s right to seek a review of the decision under section 144.

**Subpart 4—Offences and penalties**

**129 Offences in relation to failure to comply with various provisions**

(1) A person commits an offence against this Act if the person—

(a) is a participant in any year and, without reasonable excuse, fails to comply with section 62 (requirement to collect data or other information, calculate emissions and removals, and keep records) (other than by submitting an emissions return containing incorrect calculations); or
(b) without reasonable excuse,—

(i) fails to notify the EPA under section 56 that the person is carrying out an activity listed in Schedule 3; or
(ii) fails to submit an emissions return when required to do so under section 65, 118, 189, 191, or 193; or

(iia) fails to comply with the requirements relating to the calculation of, application for, or notification of an annual allocation adjustment or closing allocation adjustment under section 83 or 84, including where required to comply with section 84(1)(a) to (c) by the EPA under section 84(2)(c); or

(iii) fails to keep records as required—
   (A) under section 67 or 86D; or
   (B) by a fishing allocation plan; or
   (C) by the pre-1990 forest land allocation plan; or

(iv) fails to notify the EPA of a matter that is required to be notified under section 112; or

(v) fails to notify the EPA, within the time required, of a matter required to be notified under section 84(2)(b) or 192(3).

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—

   (a) the first time the person is convicted of that offence, to a fine not exceeding $8,000:

   (b) the second time the person is convicted of that offence, to a fine not exceeding $16,000:

   (c) on every subsequent occasion that the person is convicted of that offence, to a fine not exceeding $24,000.

130 Offence for breach of section 99

Every person to whom section 99(1) applies who knowingly acts in contravention of section 99 commits an offence and is liable on conviction to—

   (a) imprisonment for a term not exceeding 6 months; or

   (b) a fine not exceeding $15,000; or

   (c) both.

131 Offence for failure to provide information or documents

(1) A person commits an offence against this Act if the person, without reasonable excuse,—

   (a) fails to provide information to the EPA or an enforcement officer when required to do so under section 94; or

   (b) fails to appear before the EPA or an enforcement officer, or fails to produce any document or documents, when required to do so under section 95.
(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—
(a) in the case of an individual, to a fine not exceeding $12,000; or
(b) in the case of a body corporate, to a fine not exceeding $24,000.

132 Other offences

(1) A person commits an offence against this Act if the person—
(a) refuses to take an oath when required to do so under section 95; or
(b) refuses to answer any question when required to do so under section 95; or
(c) is a participant in any year and knowingly fails to comply with section 62 (requirement to collect data or other information, calculate emissions and removals, and keep records) (other than by submitting an emissions return containing incorrect calculations); or
(d) knowingly fails to submit an emissions return when required to do so under section 65, 118, 189, 191, or 193; or
(da) knowingly fails to comply with the requirements relating to the calculation of, application for, or notification of an annual allocation adjustment or a closing allocation adjustment under section 83 or 84, including when required to comply with section 84(1)(a) to (c) by the EPA under section 84(2)(c); or
(e) knowingly fails to keep records as required—
(i) under section 67 or 86D; or
(ii) by a fishing allocation plan; or
(iii) by the pre-1990 forest land allocation plan; or
(f) knowingly provides altered, false, incomplete, or misleading information (including emissions returns) to the Minister or the EPA or any other person in respect of any matter in this Part or Part 5, the ETS participant provisions; or
(g) wilfully obstructs, hinders, resists, or deceives a person exercising a power conferred on that person under this Part or Part 5, the ETS participant provisions; or
(h) wilfully interferes with any survey, investigation, test, or measurement carried out by an enforcement officer or a person assisting an enforcement officer under section 100; or
(i) refuses to provide information that an enforcement officer has demanded from that person under section 100(2)(d).

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—
(a) in the case of an individual, to a fine not exceeding $25,000; or
(b) in the case of a body corporate, to a fine not exceeding $50,000.

133 Evasion or similar offences

(1) A person commits an offence against this Act if the person, with intent to deceive and for the purpose of either obtaining any material benefit or avoiding any material detriment,—

(a) fails to comply with any of the requirements specified in section 62; or

(b) fails to submit an emissions return when required to do so under section 65, 118, 189, 191, or 193; or

(ba) fails to comply with the requirements relating to calculation and application for or notification of an annual allocation adjustment or a closing allocation adjustment under section 83 or 84 (including where required to comply with section 84(1)(a) to (c) by the EPA under section 84(2)(c)); or

(c) fails to keep records as required—

(i) under section 67 or 86D; or

(ii) by a fishing allocation plan; or

(iii) by the pre-1990 forest land allocation plan; or

(d) fails to provide information to the EPA or any other person when required to do so under this Part or Part 5 the ETS participant provisions; or

(e) provides altered, false, incomplete, or misleading information (including emissions returns) to the Minister or the EPA or any other person in respect of a matter in this Part and Part 5 the ETS participant provisions.

(2) Every person who commits an offence against subsection (1) is liable on conviction to—

(a) imprisonment for a term not exceeding 5 years; or

(b) a fine not exceeding $50,000; or

(c) both imprisonment and a fine.

134 Penalty for failing to surrender or repay units

(1) This section applies if—

(a) a person fails to surrender units by the due date when required to do so under section 65(4), 118(5), 189, 191, or 193; or

(b) an amendment to an emissions return under section 120 or an assessment made under section 121 results in a liability for a person—

(i) to surrender units or additional units under section 123(3); or

(ii) to repay units in accordance with section 123(6); or

(e) a person is required under section 125 to repay units transferred in error.
Subject to section 135, if this section applies, the person is liable to—

(a) surrender or repay the units as required under the relevant section; and

(b) pay to the EPA an excess emissions penalty of $30 for each unit that,—

(i) if subsection (1)(a) applies, the person fails to surrender by the due date; or

(ii) if subsection (1)(b) applies, the person is required to surrender under section 123(3) or repay under section 123(6); or

(iii) if subsection (1)(c) applies, the person fails to repay by the due date.

(3) If a person is liable to an excess emissions penalty under subsection (2), the EPA must give a notice to the person that,—

(a) if subsection (1)(a) or (c) applies,—

(i) refers to the person’s failure to surrender units by the due date as required under section 65(4), 118(5), 189, 191, or 193, as applicable, or repay units by the due date under section 125; and

(ii) sets out the number of units required to be surrendered or repaid; and

(iii) sets out the amount of the excess emissions penalty to which the person is liable under subsection (2)(b); and

(iv) requires the person to surrender or repay the units specified in subparagraph (ii), and pay the penalty specified in subparagraph (iii) to the EPA, within 20 working days of the date of the notice; and

(v) advises that, unless both the units are surrendered or repaid and the penalty paid in full by the due date, interest on the amount of the penalty will accrue in accordance with section 137; or

(b) if subsection (1)(b) applies,—

(i) refers to the relevant notice under section 123(1); and

(ii) sets out the amount of the excess emissions penalty to which the person is liable under subsection (2)(b); and

(iii) requires the person to pay the penalty specified in subparagraph (ii) within the period in which the person must surrender units under section 123(2) or repay units under section 123(6); and

(iv) advises that, unless both the units are surrendered or repaid and the penalty paid in full by the due date, interest on the amount of the penalty will accrue in accordance with section 137.

(4) The amount of the excess emissions penalty, 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.
134A Penalty for failing to surrender or repay units when required by notice given under section 134(3)

(1) This section applies if a person fails to surrender or repay units when required by a notice given under section 134(3).

(2) If this section applies, the person is liable to—

(a) surrender or repay the units as required under the notice; and

(b) pay to the EPA an excess emissions penalty of $30 for each unit that the person has failed to surrender or repay by the due date specified in the notice given under section 134(3).

(3) If a person is liable to an excess emissions penalty under subsection (2), 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 specified in the notice given under section 134(3); and

(b) sets out the number of units required to be surrendered or repaid; and

(c) sets out the amount of the further excess emissions penalty that the person is liable to surrender or repay under this section (if any); and

(d) requires the person to surrender or repay the units specified in paragraph (b), and pay the penalty specified in paragraph (c) to the EPA, within 20 working days of the date of the notice; and

(e) advises that, unless the units are surrendered or repaid and the further penalty is paid in full by the due date, interest on the amount of the further penalty will accrue in accordance with section 137.

(4) To avoid doubt, any liability to surrender or repay units or to pay a penalty under subsection (2) is additional to, and does not affect, the liability of a person to surrender or repay units under any other section of this Act or to pay a penalty under a penalty notice given by the EPA under section 134.

(5) The amount of the excess emissions penalty and any interest that accrues on that penalty constitute a debt due to the Crown and is recoverable by the EPA in a court of competent jurisdiction.

135 Reductions in penalty

(1) The EPA may reduce the excess emissions penalty imposed by section 134(2)(b)(i) or (iii) by up to 100%, if the person voluntarily discloses the failure to surrender or repay units before receiving a penalty notice under section 134.

(1A) The EPA may reduce the excess emissions penalty imposed by section 134A(2)(b) for a liability incurred under section 134(2)(b)(i) or (iii) by up to 100% if the person voluntarily discloses the failure to surrender or repay units before receiving a penalty notice under section 134A.
The EPA may reduce the excess emissions penalty imposed by section 134(2)(b)(ii) or 134A(2)(b) for a liability incurred under section 134(2)(b)(ii) by up to 100%, if—

(a) the person voluntarily disclosed that an emissions return submitted by the person contained incorrect information, or that the person failed to file a return when required to do so, before the EPA or an enforcement officer—

(i) requested any information under section 94 or 95 in relation to the return; or

(ii) gave notice of an intention to enter land or premises under section 100(3); or

(iii) executed a warrant under section 101; or

(b) the EPA is satisfied that the person formed a view as to the information on which the return was based or as to whether a return was required, that, while incorrect, was reasonable, having regard to the information available to that person at the time the emissions return was required.

136 Additional penalty for knowing failure to comply

(1) This section applies to a person who—

(a) is or was liable following—

(i) a new determination under section 78 or a variation or revocation of a decision under section 86C to repay units allocated and transferred to the person; or

(ii) an amendment under section 120 or an assessment under section 121 to surrender units (or additional units) or to repay units, in respect of any period covered by, or that should have been covered by, an emissions return; and

(b) is convicted of an offence under section 132(1)(c) to (f) or 133 that relates to—

(i) the units allocated and transferred to the person (including, but not limited to, the provision of information); or

(ii) an emissions return that was—

(A) amended under section 120; or

(B) assessed under section 121.

(2) If this section applies, the person is liable, in addition to any penalty imposed in respect of the offence, to—

(a) as the case may require,—

(i) transfer to the Crown holding account designated by the Minister or EPA in the notice referred to in section 79(2) or 86C(4) a number of units equivalent to the number of units specified as being
repayable in that notice under section 79(3)(a) or 86C(4), or in any review or appeal proceedings relating to that determination or decision; or

(ii) surrender a number of units equivalent to the number of units determined by the EPA in the amendment under section 120 or the assessment under section 121, or in any review or appeal proceedings relating to that determination; and

(b) pay an excess emissions penalty of $30 for each unit the person is liable to transfer or surrender under paragraph (a).

(3) If this section applies, the EPA must give a notice to the person that—

(a) sets out the—

(i) number of additional units that the person is required to transfer to a Crown holding account or surrender under subsection (2); and

(ii) amount of the excess emissions penalty to which the person is liable under subsection (2); and

(b) requires the person to transfer to the designated Crown holding account or surrender the additional units, and pay the penalty within 60 working days of the date of the notice; and

(c) advises that, unless both the units are transferred to the designated Crown holding account or surrendered (as the case may require) and the penalty paid in full by the due date, interest on the amount of the penalty will accrue in accordance with section 137.

(4) To avoid doubt, any liability to transfer units to a Crown holding account or surrender units and pay a penalty under subsection (2) is additional to, and does not affect, the liability of a person to surrender or repay units under any other section of this Act or to pay a penalty under a penalty notice given by the EPA under section 134 or 134A.

(5) The amount of the excess emissions penalty, 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.

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

(1) This section applies if a person fails, by the applicable 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—
(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) states the number of units that the person must surrender or repay; and

(d) states the amount of the penalty that the person must pay under subsection (2); and

(e) 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) If the EPA notifies a person that the EPA proposes to amend the person’s emissions return under section 120, the EPA must reverse any penalty charged under this section that relates to the original return.

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 10 working days after the notice is given, the EPA will make an assessment under section 121 and penalties will apply; and

(d) the person fails to submit the emissions return within 10 working days after the notice is given.

(2) If an assessment made under section 121 results in a liability for the person to surrender or repay units, the person must (in addition to surrendering or repaying the units) pay to the EPA a penalty calculated as follows:

\[ a \times b \times c \]

where—

(a) is the number of units that the person is liable to surrender or repay
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 (3).

(3) The culpability factor for a person is determined using this table:

<table>
<thead>
<tr>
<th>Person’s level of culpability</th>
<th>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</th>
<th>Culpability factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person did not take reasonable care, but was not grossly careless and did not knowingly fail</td>
<td>Yes</td>
<td>0.1</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>0.2</td>
</tr>
<tr>
<td>Person was grossly careless, but did not knowingly fail</td>
<td>Yes</td>
<td>0.2</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>0.4</td>
</tr>
<tr>
<td>Person knowingly failed</td>
<td>Yes</td>
<td>1.0</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>1.0</td>
</tr>
</tbody>
</table>

(4) If an assessment made under section 121 results in an entitlement for the person to receive units, the person must pay to the EPA a penalty of $1,000.

(5) 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 subsection (2) or (4); 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.

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 10 working days after the notice is given, the EPA will make a decision under section 86B(4) and penalties will apply; and

(d) the person fails to submit the allocation adjustment within 10 working days after the notice is given.

(2) If the decision made under section 86B(4) results in a liability for the person to surrender or repay units, the person must (in addition to surrendering or repaying the units) pay to the EPA a penalty calculated as follows:

\[ a \times b \times c \]

where—

\[ a \] is the number of units that the person is liable to surrender or repay

\[ b \] 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 (3).

(3) The culpability factor for a person is determined using this table.

<table>
<thead>
<tr>
<th>Person’s level of culpability</th>
<th>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</th>
<th>Culpability factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person did not take reasonable care, but was not grossly careless and did not knowingly fail</td>
<td>Yes</td>
<td>0.1</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>0.2</td>
</tr>
<tr>
<td>Person was grossly careless, but did not knowingly fail</td>
<td>Yes</td>
<td>0.2</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>0.4</td>
</tr>
<tr>
<td>Person knowingly failed</td>
<td>Yes</td>
<td>1.0</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>1.0</td>
</tr>
</tbody>
</table>

(4) If the decision made under section 86B(4) results in an entitlement for the person to receive units, the person must pay to the EPA a penalty of $1,000.

(5) The EPA must give a notice to the person that—

(a) 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

(b) refers to the notice issued under subsection (1)(c); and

(c) specifies the amount of the penalty that the person must pay under subsection (2) or (4); 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.
**134C Penalty for submitting incorrect emissions return**

(1) This section applies if—
   (a) the EPA amends a person’s emissions return under section 120; and
   (b) the EPA is satisfied that the amendment was needed because the person failed to take reasonable care.

(2) The person must (in addition to surrendering or repaying any units as required by the amendment) pay to the EPA a penalty of an amount determined in accordance with this section.

(3) If the effect of the amendment is that the person is required to surrender or repay additional units, or is entitled to receive fewer units, the penalty is calculated as follows:

\[ a \times b \times c \]

where—

- **a** is the lesser of the number of units the person should have surrendered, repaid, or received (had the emissions return been correct) and the number of additional units that the person is liable to surrender or repay as a result of the amendment.
- **b** is the price, in dollars, of carbon per tonne on the date on which the emissions return was due, 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 determined using this table:

<table>
<thead>
<tr>
<th>Person’s level of culpability</th>
<th>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</th>
<th>Culpability factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person did not take reasonable care, but was not grossly careless and did not knowingly fail</td>
<td>Yes</td>
<td>0.1</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>0.2</td>
</tr>
<tr>
<td>Person was grossly careless, but did not knowingly fail</td>
<td>Yes</td>
<td>0.2</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>0.4</td>
</tr>
<tr>
<td>Person knowingly failed</td>
<td>Yes</td>
<td>1.0</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>1.0</td>
</tr>
</tbody>
</table>

(5) If the effect of the amendment is that the person has surrendered or repaid too many units, is entitled to receive more units, or has no change in their unit entitlements, the penalty is $1000.

(6) 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
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.

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) The person must (in addition to surrendering or repaying any units as required by the changed decision) pay to the EPA a penalty of an amount determined in accordance with this section.

(3) If the effect of the change is that the person is required to surrender or repay additional units, or is entitled to receive fewer units, the penalty is calculated as follows:

\[ a \times b \times c \]

where—
\[ a \] is the lesser of the number of units the person should have surrendered, repaid, or received (had the original decision been correct) and the number of additional units that the person is liable to surrender or repay as a result of the change
\[ b \] is the price, in dollars, of carbon per tonne on the date the allocation application or adjustment was due, 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 determined using this table:

<table>
<thead>
<tr>
<th>Person’s level of culpability</th>
<th>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</th>
<th>Culpability factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person did not take reasonable care, but was not grossly careless and did not knowingly fail</td>
<td>Yes</td>
<td>0.1</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>0.2</td>
</tr>
<tr>
<td>Person was grossly careless, but did not knowingly fail</td>
<td>Yes</td>
<td>0.2</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>0.4</td>
</tr>
<tr>
<td>Person knowingly failed</td>
<td>Yes</td>
<td>1.0</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>1.0</td>
</tr>
</tbody>
</table>
(5) If the effect of the change is that the person has surrendered or repaid too many units, is entitled to receive more units, or has no change in their unit entitlements, the penalty is $1000.

(6) 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.

135 Due dates for payment of penalties

A person must pay a penalty imposed under sections 134 to 134D within 20 working days after notice is given of the penalty, or by the date or dates agreed under a deferred payment arrangement under section 135A.

135A Deferred payment arrangements for payments of penalties

(1) A person who is liable to pay a penalty imposed under sections 134 to 134D, 194EF, or 194EI may request to enter into an arrangement with the EPA for the person to pay the penalty after its due date, 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, 194EF, or 194EI, 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.

137 Interest for late payment

(1) This section applies if—
(a) a person—
   (i) has failed to surrender or repay units when required to do so and is liable to pay an excess emissions penalty in relation to those units under section 134(2)(b)(i) or (iii) or 134A(2)(b); or
   (ii) is required to surrender or repay units under section 123 and is liable to pay an excess emissions penalty in relation to those units under section 134(2)(b)(ii) or 134A(2)(b); or
   (iii) is required to transfer units to a Crown holding account or surrender units and pay an excess emissions penalty under section 136; and
(b) the person does not comply, or comply in full, with the requirement to surrender or repay units and to pay the penalty by the relevant date.

(1) This section applies if—
(a) a person is liable to pay a penalty imposed under sections 134 to 134D, 194EF, or 194EI; 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) If this section applies, the person is liable to pay interest on the full amount of the excess emissions penalty—
   (a) at the rate prescribed by the Governor-General by Order in Council; and
   (b) for the period from the date by which the penalty was due to be paid until the associated liability to surrender or repay units or to transfer units to a Crown holding account under section 136 (or to pay any associated debt under section 159) has been met, and until the penalty and any interest due have been paid in full.

(3) To avoid doubt, interest accrues under subsection (2) even if the amount of the excess emissions penalty in a penalty notice has been paid in full if the associated requirement to surrender or repay units or to transfer units to a Crown holding account under section 136 (or to pay any associated debt under section 159) has not been met in full.

(4) Despite anything in this section, the EPA may remit any amount of interest that has accrued under this section, if the EPA is satisfied that—
   (a) the failure of the person to comply with the requirement to surrender or repay units or to transfer units to a Crown holding account under section 136 and pay the penalty in full arises as a result of an event or a circumstance beyond the control of that person; and
   (b) as a consequence of that event or circumstance, the person has a reasonable justification or excuse for the non-compliance; and
   (c) the person corrected the failure to comply as soon as practicable.

(5) Without limiting the EPA’s discretion under subsection (4), an event or circumstance may include—
   (a) an accident or a disaster; or
   (b) illness or emotional or mental distress.

(6) Despite anything in this section, the EPA may remit 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 the full amount.

(7) For the purposes of this section, an event or circumstance does not include—
   (a) an act or omission of an agent of a person, unless the EPA is satisfied that the act or omission was caused by an event or circumstance beyond the control of the agent—
      (i) that could not have been anticipated; and
(ii) the effect of which could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or

(b) a person’s financial position.

138 Obligation to pay penalty not suspended by appeal

(1) The obligation to pay and the right to receive and recover any excess emissions penalty or interest imposed under section 134, 134A, 136, or 137, and the obligation to transfer to a Crown holding account or surrender any additional units under section 136, are not suspended by any review or appeal.

(2) If the applicant or appellant is successful in the review or appeal, the amount of any excess emissions penalty or interest paid by the applicant must be refunded to the applicant or appellant by the EPA, and any units not required to be transferred to a Crown holding account or surrendered must be reimbursed in accordance with the procedure specified in section 124.

(3) However, any obligation on the EPA under subsection (2) is suspended pending the outcome of any appeal filed under section 146.

(4) The EPA must pay interest on any refunded excess emissions penalty and interest calculated in accordance with the following formula:

\[ ((X \times Y) \div 365) \times Z \]

where—

X is the number of days in the period that—

(a) commences on the day on which the relevant penalty is lodged to the credit of the EPA; and

(b) ends on the day on which the relevant penalty is refunded by the EPA; and

Y is the amount of penalty and interest that, having been paid, is caused to be refunded in accordance with the outcome of a successful appeal; and

Z is the rate of interest specified by the Governor-General by Order in Council made under section 137(2)(a).

138A Penalties to be paid into Crown account

The EPA must pay the amount of all excess emissions penalties and interest on the penalties received from a person in accordance with section 134, 134A, 136, or 137 into a Crown Bank Account.
138A Penalties to be paid into Crown account

(1) 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, 137, 194EF, or 194EI into a Crown Bank Account.

(2) However, this section is subject to a court order that a penalty imposed under section 194EF or 194EI must be applied first to pay the EPA’s actual costs in bringing the proceedings.

139 Liability of body corporate

If, in the course of proceedings against a body corporate for an offence under this Part, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee, or agent of the body corporate, acting within the scope of the person’s actual or apparent authority, had that state of mind.

140 Liability of directors and managers of companies

If a body corporate is convicted of an offence under this Part, every director and every person concerned in the management of the body corporate is also guilty of that offence if it is proved that—

(a) the act or omission that constituted the offence took place with the authority, permission, or consent of the director or person; or

(b) the director or person knew that the offence was to be, or was being, committed and failed to take all reasonable steps to prevent or stop it.

141 Liability of companies and persons for actions of director, agent, or employee

(1) Any act or omission on behalf of a body corporate or other person (the principal) by a director, agent, or employee of the principal is to be treated for the purposes of this Act as being also the act or omission of the principal.

(2) Despite subsection (1), if a principal is charged under this Part in relation to the act or omission of an agent for an offence against any of sections 132(1)(c) to (f) or 133, it is a defence to the charge if the principal proves that the principal took all reasonable steps to prevent the commission of the offence or the commission of offences of that kind.

142 Limitation period for commencement of proceedings

(1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against—

(a) section 131 or 132(1)(a), (b), (g), (h), or (i) ends on the date that is 2 years from the date on which the offence was committed:

(b) section 129, 130, or 132(1)(c) to (f) ends on the date that is 7 years from the date on which the offence was committed.
(2) Nothing in subsection (1) affects the application of section 25 of the Criminal Procedure Act 2011 in relation to any offence not mentioned in that subsection.

143 Evidence in proceedings

(1) In any proceedings for an offence against this Part or Part 5 the ETS participant provisions, a certificate or document (including an electronic copy) of any of the following kinds is admissible in evidence and, in the absence of proof to the contrary, is sufficient evidence of the matter stated in the certificate or the document, as the case may require:

(a) a certificate purporting to be signed by a delegate of the EPA, to the effect that, at any specified date or period,—
   (i) a named person is or was, or is not or was not, an enforcement officer or a person or organisation recognised under section 92; or
   (ii) a person was, or was not, registered as a participant in relation to an activity listed in Schedule 4:

(b) a certificate purporting to be signed by any person authorised to delegate to any person, or to persons of any kind or description, the exercise of any power or the performance of any function under this Part or Part 5 the ETS participant provisions, stating that the person has delegated—
   (i) the exercise of the power or the performance of the function specified in the certificate to the person specified in the certificate; or
   (ii) the exercise of the power or the performance of the function specified in the certificate to persons of a kind or description specified in the certificate, and that a named person specified in the certificate is a person of that kind or description.

(2) The production of a certificate or document purporting to be a certificate to which subsection (1) applies is prima facie evidence that it is such a certificate or document, without proof of—

(a) the signature of the person purporting to have signed the document; or
(b) the document’s nature.

Subpart 5—Review and appeal provisions

144 Request for review of decisions

(1) A person affected by a decision of the EPA under a provision in this Part or Part 5 who is dissatisfied with the decision may, by notice to the EPA within 20 working days of receiving notice of the decision, or within any further period that the EPA allows, request the EPA to review the decision.

(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 196G.

(2) The request must set out the grounds on which it is believed that the original decision should be reviewed.

(3) For the purposes of a review, the EPA may require the person making the request for review to supply information additional to that contained in the request.

(3A) 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.

(4) Following a review, the EPA may confirm, revoke, or vary the decision in the manner that the EPA thinks fit.

(4A) Before revoking or varying the forestry classification of an area of land, the EPA must, in accordance with regulations made under section 196G, consult the persons (if any) that appear likely to be substantially affected by the revocation or variation.

(5) The decision requested to be reviewed remains valid unless and until altered by the EPA.

(6) The EPA must, as soon as practicable, give notice to the person who requested the review of the decision on the review, and of the reasons for it.

(7) A decision by the EPA under this section is final, unless determined otherwise by a court under an appeal under section 145 or 146.

(8) This section does not apply to any decision that the EPA makes under section 90 or of the EPA in relation to emissions rulings (including a decision to decline making a ruling) under sections 107 to 117.
145 **Right of appeal to District Court**

(1) A person has a right of appeal to the District Court if affected by a decision of the EPA under section 144.

(2) The court may confirm, reverse, or modify the decision appealed against.

(3) Every decision appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.

146 **Appeals to High Court on questions of law only**

If a party to any proceedings before the District Court under section 145 is dissatisfied with any determination of the court as being erroneous in point of law, the party may appeal to the High Court by way of case stated for the opinion of the court on a question of law only.

Subpart 6—Miscellaneous provisions

147 **Giving of notices by EPA**

(1) This section applies if this Act requires the EPA to give a notice to a person.

(2) If this section applies, the EPA—

   (a) must give the notice in writing to—

      (i) the person; or

      (ii) a representative authorised to act on behalf of the person; and

   (b) may give notice by—

      (i) personal delivery to a person that is not a body corporate:

      (ii) personal delivery to a person that is a body corporate, if the personal delivery is made to the person’s office during working hours:

      (iii) an electronic means of communication to the person, if the EPA complies with Part 4 of the Contract and Commercial Law Act 2017:

      (iv) post to—

         (A) the street address of the person’s usual or last known place of residence; or

         (B) the street address of any of the person’s usual or last known places of business; or

         (C) any other address, if the person has notified the EPA that the person accepts notices at the address.

(3) A notice given by post under subsection (2)(b)(iv) is to be treated as having been given at the time the notice would have been delivered in the ordinary course of the post.
148 Giving of notices to EPA

(1) This section applies if this Act requires a person to give a notice to the EPA.

(2) If this section applies, the person must—

(a) give the notice in writing; and

(b) may—

(i) give the notice to the EPA at the office of the EPA;

(ii) give the notice by—

(A) personal delivery, if the personal delivery is made during working hours;

(B) an electronic means of communication, if the person complies with Part 4 of the Contract and Commercial Law Act 2017;

(C) post to the post office box number for the office.

(2) If this section applies, the notice must be given—

(a) in writing; and

(b) to the EPA at the office of the EPA; and

(c) in 1 of the following ways:

(i) by personal delivery during working hours;

(ii) by an electronic means of communication in accordance with Part 4 of the Contract and Commercial Law Act 2017;

(iii) by post to the post office box number for the office.

(3) A notice given by post under subsection (2)(b)(ii)(C) subsection (2)(c)(iii) is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.

149 Sharing information

(1) The purpose of this section is to facilitate the exchange of information between any person with functions or powers under this Act, the Registrar, and the inventory agency.

(2) A person referred to in subsection (1) (person A) must provide information to another person referred to in that subsection (person B) if the information—

(a) is requested by person B; and

(b) is required by person B to assist person B to carry out his or her functions under this Act.

150 Formation of consolidated group

(1) Any 2 or more participants who are members of a group may, in respect of any activity or activities listed in Schedule 3 or 4, elect to form and be treated as a consolidated group for the purposes of this Part and Part 5.
(2) A consolidated group may, in addition to participants who are members of the
group, include a member of the group that is not a participant, if that entity is to
act as the nominated entity.

(1) Any 2 or more members of a group may elect to form and be treated as a con-
solidated 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 activ-
ities.

(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 industrial activity;
(c) 1 other member that is not a participant, if that entity is to act as the
nominated entity.

(3) An election under subsection (1) must be made by giving notice to the EPA in
the prescribed form.

(4) A notice given under subsection (3) must—
(a) include—
(i) the names of each of the entities that are to be members of the
consolidated group (and contact details of any member that is not
registered as a participant); and
(ii) the activities in respect of which the members elect to be treated
as a consolidated group; and
(b) nominate one of the entities listed in the notice (the nominated entity)
as the agent of the consolidated group in respect of the activities speci-
fied in the notice and
this Part and Part 5 the ETS participant provisions; and
(c) contain an agreement by each entity listed in the notice as a member of
the consolidated group—
(i) to be jointly and severally liable with the other members of the
consolidated group for any obligations under this Part or Part 5 in
respect of emissions and removals resulting from the ETS partici-
pant provisions in respect of emissions and removals resulting
from, or allocations relating to, the activities specified in the
notice; and
(ii) to the transfer to the consolidated group’s holding account on
behalf of the group of any units to which any member of the con-
solidated group may become entitled in respect of any removal
activity, or by an allocation relating to an eligible industrial activ-
ity, listed in the notice.
(5) The EPA must acknowledge the formation of a consolidated group by notice to all members of the group given within 1 month after the EPA’s receipt of a notice under subsection (3).

(6) 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. Two or more entities who make an election under subsection (1) must be treated, for the purposes of the ETS participant provisions, as being members of a consolidated group,—

(a) if notice of the formation of the consolidated group is received by the EPA by 30 September in any year, from the beginning of that year;

(b) if notice of the formation of the consolidated group is received by the EPA after 30 September in any year, from the beginning of the following year.

(6A) Despite subsection (1), 2 or more members of a group may, if they elect to form a consolidated group in respect of an activity to which subsection (1) applies, give notice to the EPA under subsection (3)—

(a) at the same time they all give notice to the EPA under section 56 in respect of that activity; or

(b) at the same time they all submit an application under section 57 in respect of that activity.

(6B) Despite sections 56(1), 57(3), and 61, an entity that gives notice to the EPA in accordance with subsection (6A) is not required to have its own holding account under section 61 to comply with its obligations as a participant or an eligible person in respect of an activity specified in the notice given under subsection (3) and is not required to open a holding account when giving notice under section 56 or making an application under section 57 in respect of an activity, if—

(a) the notice given in accordance with subsection (6A) is received by the EPA by 30 September in the year in which that notice is given; and

(b) the nominated entity specified in the notice given in accordance with subsection (6A) has, or has applied for, a holding account in the name of the consolidated group.

(7) To avoid doubt, a participant or an eligible person may be a member of more than 1 consolidated group in relation to different activities.

151 Changes to consolidated groups

(4) If at any time 2 or more participants who are members of a group have formed a consolidated group, and at least 1 participant remains a member of the consolidated group, any other participant (or, in the circumstances specified in section 150(2), any other entity that is a member of the group) 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.
(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) A notice given under subsection (1) must—
   (a) include—
      (i) the name of the entity that elects to join the consolidated group (and the entity’s contact details if it is not registered as a participant) and sufficient information for the EPA to identify the consolidated group that is to be joined; and
      (ii) if the entity is a participant, the activity or activities in respect of which the entity elects to be treated as a member of that consolidated group; and
   (b) contain the agreement of the entity—
      (i) to be jointly and severally liable with the other members of the consolidated group for any obligations under this Part or Part 5 in respect of emissions and removals resulting from the ETS participant provisions in respect of emissions and removals resulting from, or allocations relating to, the activities of the members of the group; and
      (ii) if the entity is a participant, to the transfer to the consolidated group’s holding account on behalf of the group of any units to which the entity may become entitled in relation to any removal activities, or by an allocation relating to an eligible industrial activity, specified in the notice; and
   (c) contain the agreement of every existing member of the consolidated group—
      (i) to be jointly and severally liable with the other members of the group for any obligations under this Part or Part 5 in respect of emissions and removals resulting from the ETS participant provisions in respect of emissions and removals resulting from, or allocations relating to, the activities of the joining entity; and
      (ii) to the transfer to the consolidated group’s holding account, on behalf of the group, of any units to which the joining entity may become entitled in respect of the activity or activities of that entity, or by an allocation relating to an eligible industrial activity of that entity, specified in the notice.

(3) The EPA must acknowledge the joining of a member to a consolidated group by notice to all members of the group given within 1 month after the EPA’s receipt of a notice under subsection (1).
Subject to subsection (6), if a participant elects under subsection (1) to join a consolidated group, that participant must be treated for the purposes of this Part and Part 5 as being a member of that consolidated group on and after 1 January of the year in which the participant gives notice to the EPA under subsection (1).

If an entity referred to in section 150(2) has elected by notice under subsection (1) to join a consolidated group, that entity 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, or from any later date that may be specified in the notice.

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).

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.

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, a participant in respect of an activity may give notice to the EPA under subsection (1)—

(a) at the same time as giving notice to the EPA under section 56 in respect of that activity; or
(b) when submitting an application under section 57 in respect of that activity.

Despite sections 56(1), 57(3), and 61, an entity that gives notice to the EPA in accordance with subsection (6) is not required to have its own holding account under section 61 to comply with its obligations as a participant in respect of an activity specified in the notice given under subsection (1) and is not required to apply for a holding account, when—

(a) giving notice to the EPA under section 56 in respect of that activity; or
(b) submitting an application under section 57 in respect of that activity.

151A Addition of activities to consolidated groups

A member of a consolidated group may elect to add to the activities in respect of which the member is treated as a member of the consolidated group by giving notice to the EPA in the prescribed form.

A notice given under subsection (1) must—
(a) include the name of the member and the activity or activities the member is electing to add to the activities in respect of which the member is treated as a member of the consolidated group; and

(b) contain the agreement of every existing member of the consolidated group—

(i) to be jointly and severally liable with the other members of the group for any obligations under this Part or Part 5 in respect of emissions and removals resulting from the ETS participant provisions in respect of emissions and removals resulting from, or allocations relating to, the member’s activity or activities specified in the notice; and

(ii) to the transfer to the consolidated group’s holding account, on behalf of the group, of any units to which the adding member may become entitled in respect of the activity or activities, or by an allocation relating to an eligible industrial activity, specified in the notice.

(3) The EPA must acknowledge that the member has added the activity or activities specified in the notice under subsection (1) to the activities in respect of which the member is treated as a member of the consolidated group by giving notice to all members of the group within 1 month of the EPA’s receipt of the notice.

(4) If a member has elected under subsection (1) to add to the activities in respect of which the member is treated as a member of the consolidated group, the activity or activities specified in the notice are added,—

(a) if the notice of the election is received by the EPA by 30 September in a year, on and after 1 January of that year;

(b) if the notice of the election is received by the EPA after 30 September in a year, on and after 1 January of the next year.

152 Nominated entities

(1) The nominated entity for a consolidated group at any time is to be treated for the purposes of this Part and Part 5 the ETS participant provisions as the agent at that time of the consolidated group, and of each entity that is at that time a member of the consolidated group, except where this Act otherwise expressly provides or the context otherwise requires.

(2) No entity is at any time a nominated entity for a consolidated group unless, at the time, the entity is a member of the consolidated group.

(3) An entity that is a nominated entity for a consolidated group may give notice to the EPA, in a form that the EPA approves, that—

(a) the entity is to cease to be the agent for the consolidated group; and

(b) another member entity is to become the agent for the consolidated group.
(4) If an entity gives notice under subsection (3), then, from the date of receipt by the EPA of the notice, or from a later date that may be specified in the notice,—

(a) the notifying entity ceases to be the agent for the consolidated group; and

(b) the other entity becomes the agent (nominated entity) for the consolidated group.

153 Effect of being member of consolidated group

(1) The nominated entity of a consolidated group must—

(a) have a holding account in the name of the consolidated group for the purposes of meeting the members’ obligations under this Part and Part 5; and

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

(c) 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.

(2) Each member of a consolidated group is jointly and severally liable to surrender the amount of units assessed in relation to the consolidated group in any year, and that joint and several liability is in substitution for any liability of those members under this Part or Part 5 individually in respect of units to be surrendered for that year (to the extent that the surrender obligation relates to a period when the entity is a member of the consolidated group).

(3) The liability of every member of the consolidated group to surrender units in respect of any year is met by the transfer of the units assessed in relation to the consolidated group from the consolidated group’s holding account to a surrender account designated by the EPA.

(4) Each member of a consolidated group is jointly entitled to any New Zealand units assessed in relation to the removal activities of the consolidated group in any year, and that joint entitlement is in substitution for any entitlement of those members under this Part or Part 5 individually in respect of units to be transferred for that year (to the extent that the entitlement relates to a period when the entity is a member of the consolidated group).

(5) The entitlement of every member of the consolidated group to be transferred units for removal activities in respect of any year must be met by the transfer of the number of units assessed in relation to the consolidated group to the consolidated group’s holding account.
(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 industrial 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 industrial 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 86BA, which must be done in accordance with this section.

(6) This section—
   (a) does not prevent the nominated entity submitting—
      (i) a quarterly emissions return under section 66 for other removal activities of the consolidated group; or
(ii) submitting an emissions return under section 187 in respect of an entity who is a member of the consolidated group; and
(b) applies with any necessary modifications to the period of an emissions return in either of those circumstances.

(7) To avoid doubt, an emissions return for a consolidated group or any member of a consolidated group may be submitted only by the nominated entity of the consolidated group.

154 Emissions returns by consolidated group in respect of activities in Part 1 of Schedule 4

(1) The nominated entity of a consolidated group that has been formed in respect of an activity listed in Part 1 of Schedule 4—
(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 in a year; and
(ab) may, if section 189(2)(d) applies to a member, submit an emissions return in accordance with section 189(4A) on behalf of the member; and
(b) must submit a single emissions return in respect of any activity listed in Part 1 of Schedule 4 carried out by any members when required to do so by section 189(4); and
(c) must submit any emissions return required by section 191 or 193 on behalf of any member when a member is required to do so; and
(d) must sign any emissions return referred to above in accordance with section 65(2)(f) on behalf of the consolidated group.

(2) Section 153(2) to (5) apply to the liability to surrender units or entitlement to be transferred units in relation to an emissions return referred to in this section as if the references to a year were a reference to the period covered by the emissions return or, if the return does not relate to a period covered by the emissions return, as if section 153(2) to (5) referred to the liability to surrender units or entitlement to be transferred units in relation to the emissions return.

(3) To avoid doubt, only the nominated entity may submit an emissions return for a consolidated group that has been formed in respect of 1 or more of the activities listed in Part 1 of Schedule 4.

155 Ceasing to be member of consolidated group

(1) An entity that is a member of a consolidated group ceases to be a member of the consolidated group if—
(a) the entity so elects, by notice to the EPA in a form that the EPA approves; or
(b) the entity ceases to be a member of the group in respect of which it is eligible to be a member of the consolidated group; or
(c) the entity ceases to be a participant or eligible person, unless the entity is the nominated entity; or

(d) the entity ceases to be the nominated entity and is not a participant or eligible person; or

(e) the entity is a member of a consolidated group that has ceased to have a nominated entity.

(2) An entity is treated as having ceased to be a member of a consolidated group,—

(a) if subsection (1)(a) applies and the notice of election to cease to be a member of the consolidated group is received by the EPA—

(i) by 30 September in any year, on and after 1 January of that year; or

(ii) after 30 September in any year, on and after 1 January of the following year; and

(b) if subsection (1)(b) applies, with effect from the date on which the entity ceased to be a member of the group in respect of which it is eligible to be a member of the consolidated group; and

(c) if subsection (1)(c) applies, with effect from the date the participant's name is removed from the register of participants under section 58 or 59; and

(d) if subsection (1)(d) applies, with effect from the date of receipt by the EPA of the notice under section 152(3) notifying that the entity has ceased to be the nominated entity for the consolidated group; and

(e) if subsection (1)(e) applies, with effect from the date on which the consolidated group ceased to have a nominated entity.

(3) Subsection (1)(e) does not apply if—

(a) the nominated entity ceases to be the nominated entity by reason of being liquidated; and

(b) within 20 working days of that liquidation, or within such further period as the EPA may allow, the other entities in the consolidated group have selected another nominated entity and notified the EPA accordingly (in which case the selected entity is treated as the nominated entity with effect from the time of the liquidation).

(4) An entity that ceases to be a member of a group in respect of which it is eligible to be a member of the consolidated group, or is a member of a consoli-
dated group that ceases to have a nominated entity, must as soon as practicable give notice to the EPA of this change of circumstances.

(5) The EPA must acknowledge the cessation of membership of a member of a consolidated group by notice to that member and the other members of the consolidated group given within 1 month of—
   (a) the EPA receiving a notice under—
       (i) subsection (1)(a); or
       (ii) section 152(3); or
   (b) the EPA becoming aware that subsection (1)(b), (c)(ii), or (e) applies; or
   (c) the member being removed from the register of participants under section 58 or 59.

(6) Subsection (7) applies to an entity that—
   (a) ceases to be a member of a consolidated group but remains a participant; and
   (b) does not have its own holding account.

(7) An entity to which this subsection applies must,—
   (a) immediately upon ceasing to be a member of the consolidated group, apply to open a holding account under section 18A; and
   (b) supply the account number of the holding account, or ensure the account number of the holding account is supplied, to the EPA within 10 working days of receiving the account number from the Registrar.

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 this Part or Part 5 in respect of emissions and removals from the activities of the members of the consolidated group, and jointly entitled to any units transferred for the removal 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 this Part or Part 5 in respect of emissions and removals from the activities of other members of the group, or entitled to the benefit of any units transferred for the removal activities of other members of the group, for any period during which the entity is not a member of the consolidated group.
sions in respect of emissions and removals from, or allocations 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 industrial 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 from, or allocations 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 industrial activities, of other members of the group, for any period during which the entity is not a member of the consolidated group.

156A Removal of activities from consolidated groups

(1) A member of a consolidated group may elect to remove 1 or more activities from the activities in respect of which the member is treated as a member of the consolidated group by giving notice to the EPA in the prescribed form.

(2) The activity or activities specified in the notice under subsection (1) are removed from the activities in respect of which the member is treated as a member of the consolidated group,—

(a) if the notice of the election is received by the EPA by 30 September in a year, on and after 1 January of that year:

(b) if the notice of the election is received by the EPA after 30 September in a year, on and after 1 January of the next year.

(3) The EPA must acknowledge that the activity or activities specified in the notice under subsection (1) are removed from the activities in respect of which the member is treated as a member of the consolidated group by giving notice to all members of the group within 1 month of the EPA’s receipt of the notice.

(4) If a member has removed an activity from the activities in respect of which the member is treated as a member of a consolidated group, that member continues to be jointly and severally liable with the other members of the consolidated group for any obligations under this Part or Part 5 in respect of emissions and removals—

the ETS participant provisions in respect of emissions, removals, and allocations related to the activity, and jointly entitled to any units transferred for the activity (if it is a removal activity or an eligible industrial activity), in respect of the period in which the activity was an activity in respect of which the member was treated as a member of the consolidated group.

(5) Subsection (6) applies to a member of a consolidated group that—

(a) removes 1 or more activities from the activities in respect of which the member is treated as a member of the consolidated group; and

(b) remains a participant in respect of 1 or more of those activities; but
A member of a consolidated group to which this subsection applies must—
(a) apply to open a holding account under section 18A immediately upon removal of the activity or activities from the activities in respect of which the member is treated as a member of the consolidated group; and
(b) supply the account number of the holding account, or ensure the account number of the holding account is supplied, to the EPA within 10 working days of receiving the account number from the Registrar.

157 Unincorporated bodies
(1) This section applies if the members of an unincorporated body—
(a) jointly carry out an eligible activity; or
(b) are required under section 180, 204, or 213 to be treated as jointly carrying out an activity listed in Schedule 3; or
(c) if paragraph (b) does not apply, jointly carry out an activity listed in Schedule 3 or 4.
(2) If this section applies,—
(a) the members of the unincorporated body are not individually to be treated as persons carrying out the activity; and
(b) if the activity is an eligible activity,—
(i) the members of the unincorporated body may not apply individually for an allocation of New Zealand units for the eligible activity under section 86; but
(ii) the unincorporated body may, as the eligible person, make such an application under section 86; and
(c) if the activity is an activity listed in Schedule 3 or 4,—
(i) the members of the unincorporated body—
(A) are not liable to, and may not, be registered as a participant under section 56 in respect of the activity; and
(B) may not be registered as a participant under section 57 in respect of the activity; and
(ii) the unincorporated body—
(A) must notify the EPA that it is the participant under section 56 in respect of the activity (if the activity is an activity listed in Schedule 3):
(B) may apply to be registered as the participant under section 57 in respect of the activity (if the activity is an activity listed in Schedule 4):
when notifying under section 56 or applying to be registered under section 57, as the case may be, must advise the EPA of the name of the unincorporated body that should be entered on the register of participants kept for the purposes of section 56 or 57; and

(iii) the EPA must, for the purpose of section 56(3) or 57(5) (as applicable), enter the name of the unincorporated body on the register kept for the purposes of section 56 or 57; and

(d) the unincorporated body must, when applying for an allocation, or notifying the EPA under section 56, or applying to the EPA to be registered as a participant under section 57, as the case may be, provide the EPA with—

(i) the names and contact details of the members of the unincorporated body; and

(ii) the name and contact details of the person to whom notices are to be given under this Act on behalf of the unincorporated body; and

(e) subject to subsections (3) to (5), any change of members of the unincorporated body has no effect for the purposes of this Act.

(3) Each person who is or has ceased to be a member of an unincorporated body is, in respect of the period during which the person is or was a member of the unincorporated body,—

(a) jointly and severally liable for the obligations of the unincorporated body as an eligible person (or a person to whom units have been allocated) or as a participant in respect of the activity; and

(b) jointly entitled to the benefits of the unincorporated body as an eligible person or as a participant in respect of the activity.

(4) If this Act requires any thing to be done by or on behalf of an eligible person (or a person to whom units have been allocated) or a participant that is an unincorporated body,—

(a) it is the joint and several liability of all the members of the unincorporated body to do the thing; and

(b) any such thing done by 1 member of the unincorporated body is sufficient compliance with the requirement.

(5) A notice that is addressed to an unincorporated body and given in accordance with this Act to the person nominated by the unincorporated body under subsection (2)(d)(ii) or (if relevant) notified under section 157A(2)(a) is to be treated as notice given to the unincorporated body and all members of the unincorporated body.

(6) To avoid doubt, if this Act requires a landowner, registered leaseholder, holder of a registered forestry right, or party to a Crown conservation contract to be treated as the person carrying out an eligible activity or an activity listed in
Schedule 3 or 4, and the land, registered lease, registered forestry right, or Crown conservation contract is owned, held, or has been entered into, as the case may be, jointly by 2 persons, those persons—

(a) must together be treated as the person carrying out the activity for the purposes of this Act; and

(b) are, as relevant, together the eligible person in respect of the eligible activity, or the participant in respect of any activity listed in Schedule 3, or may together be registered as the participant in respect of an activity listed in Schedule 4; and

(c) are jointly and severally liable for the obligations, or entitled to the benefits, of an eligible person (or a person to whom units have been allocated) or a participant in respect of the activity.

157A Changes to unincorporated bodies that are participants

(1) This section applies if—

(a) a member of an unincorporated body joins or leaves an unincorporated body that is registered as a participant; or

(b) the name or contact details of the person to whom notices are to be given changes; or

(c) an unincorporated body wishes to change the name under which the body is registered as a participant.

(2) If this section applies,—

(a) the unincorporated body must, as relevant,—

(i) within 20 working days of a person joining or leaving the unincorporated body, give the EPA notice of—

(A) the name and contact details of the person joining or leaving; and

(B) the date on which the person joined or left the unincorporated body; or

(ii) within 20 working days of a change in the name or contact details of the person to whom notices are to be given, give the EPA notice of that matter; or

(iii) give the EPA notice if the unincorporated body wishes to change the name under which the body is recorded as a participant on the register kept for the purposes of section 56 or 57; and

(b) the EPA must, as soon as practicable after receiving the notice,—

(i) amend—

(A) the EPA’s records to reflect the change in membership of the unincorporated body or the change in the name or con-
tact details of the person to whom notices are to be given; or

(B) the register kept under section 56 or 57, as the case may be, to record the change in the name of the unincorporated body; and

(ii) notify the Registrar of the change in membership of the unincorporated body, the change in the name or contact details of the person to whom notices are to be given, or the change in the unincorporated body’s name; and

(iii) notify the unincorporated body of the amendment to the EPA’s records or the participant register and the notification to the Registrar.

(3) A notice given under subsection (2) must—

(a) be in the prescribed form; and

(b) contain any other information the EPA may require; and

(c) be accompanied by the prescribed fee (if any).

(4) For the purposes of subsection (1), the following transfers must be treated as changes in the membership of an unincorporated body and not as the transfer of an interest for the purposes of section 192(1)(a):

(a) the transfer of land from members of an unincorporated body to members of an unincorporated body if at least 60% of the members of an unincorporated body are the same following the transfer; and

(b) the transfer of a registered lease, registered forestry right, or Crown conservation contract relating to post-1989 forest land from members of an unincorporated body to members of an unincorporated body if at least 60% of the members of an unincorporated body are the same following the transfer.

158 Compensation for participants where public works result in liability to surrender units

(1) This section applies if a person becomes a participant in respect of an activity listed in Schedule 3 after being required to carry out the activity as a result of the exercise of a power that relates to a public work.

(2) If this section applies, the person who exercised the power must, to the extent that the participant is not compensated under any other Act, compensate the participant for any liability to surrender units that the participant incurs as a result of the exercise of the power.

(3) All claims for compensation under subsection (2) must, unless settled by agreement, be determined in the manner provided by the Public Works Act 1981, and the provisions of that Act relating to compensation apply accordingly.
For the purposes of this section, public work has the same meaning as in section 2 of the Public Works Act 1981.

159 Recovery of costs

(1) This section applies if a person—
   (a) is required to surrender or repay units and does not do so, or does not surrender or repay the total number of units required to be surrendered or repaid, within 1 year of the date of a penalty notice given under section 134 or 136; or
   (b) is a participant and enters into an insolvency process.

(2) If this section applies, the chief executive may seek to recover from the person, in a court of competent jurisdiction,—
   (a) the cost of the units owed by the person as a debt; and
   (b) the cost of the units that the insolvent participant would be required to surrender or repay under any other provision of this Act (other than this provision); and
   (c) any costs associated with bringing and carrying out the action to recover the debt.

(3) For the purposes of subsection (2)(a), the following formula must be used to calculate the total cost of the units:

\[ A = B \times C \]

where—

A is the total cost of the units
B is the number of units
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.

(4) Any administrative costs incurred in the recovery of costs under subsection (2) and any penalties incurred under section 134, 134A, or 136 to 134D, 194EF, or 194EI constitute a debt to the Crown and are recoverable by the chief executive in a court of competent jurisdiction.

(5) For the purposes of this section, insolvency process means receivership under the Receiverships Act 1993, liquidation under the Companies Act 1993, or bankruptcy under the Insolvency Act 2006.

(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.

160 Review of operation of emissions trading scheme
(1) The Minister may, at any time, initiate a review of the operation and effectiveness of the emissions trading scheme established by this Act.
(2) A review may be undertaken by any method the Minister considers appropriate.
(3) Without limiting the Minister’s discretion under subsections (1) and (2), the Minister may appoint a review panel—
(a) to conduct a review under subsection (1); and
(b) to report in accordance with the terms of reference.
(4) If the Minister appoints a panel, the Minister must—
(a) specify the written terms of reference for the review; and
(b) publish the report of the panel; and
(c) present a copy of the report to the House of Representatives.
(5) If the Minister initiates a review but does not appoint a panel, the Minister must—
(a) consult persons (or their representatives) who appear to the Minister likely to have an interest in the review; and
(b) consult representatives of iwi and Māori who appear to the Minister to be likely to have an interest in the review; and
(c) specify the written terms of reference for the review; and
(d) establish a procedure that the Minister is satisfied is appropriate, fair in the circumstances, and in accordance with the terms of reference.

161 Appointment and conduct of review panel
(1) If the Minister appoints a review panel under section 160, the Minister must—
(a) ensure that there are a minimum of 3 and a maximum of 7 members; and
(b) ensure that the majority of the members are not employees under the State Sector Act 1988; and
(c) consider whether the members have, in the Minister’s opinion, the appropriate knowledge, skill, and experience to conduct the review, including knowledge, skill, and experience of—
(i) this Act; and
(ii) New Zealand’s international obligations under the Protocol and the Convention and any other relevant international agreement; and
(ii) international climate change obligations and any other relevant international agreement; and

(iii) the operation of the emissions trading scheme established under this Act, including its environmental, social, and economic effects; and

(d) appoint 1 member as the chairperson of the panel.

(2) The Minister must, by written notice to the panel, specify the terms of reference for the review to be conducted by the panel.

(3) A review panel must complete a draft report on the review and provide the report to the Minister by the date set out in the terms of reference.

(4) The review panel must—

(a) allow the Minister at least 10 working days within which to respond to and comment on the contents of the draft report; and

(b) after considering the Minister’s response and comments (if any), prepare a final report and provide it to the Minister by the date set out in the terms of reference.

(5) In conducting a review, the review panel—

(a) must establish a procedure that is appropriate, fair in the circumstances, and in accordance with the terms of reference for the review; and

(b) must consult persons (or their representatives) that appear to the panel likely to have an interest in the review; and

(c) may call for submissions.

161A Regulations in relation to eligible industrial activities

(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, for the purposes of subpart 2, the activities that are eligible industrial activities:

(b) prescribing in respect of each eligible industrial activity, as appropriate,—

(i) a description of the activity, including (but not limited to)—

(A) the input or inputs:

(B) the output or outputs:

(C) the physical, chemical, or biological transformation that takes place to transform the inputs into the outputs:

(ii) whether the activity is—

(A) highly emissions-intensive; or

(B) moderately emissions-intensive:
(iii) the products to be used as the basis for an allocation of New Zealand units in respect of the activity:

(iv) a methodology or methodologies for calculating the amount of each prescribed product for the purposes of sections 81 to 84:

(c) prescribing, for each prescribed product,—

(i) 1 or more allocative baselines; and

(ii) for the purpose of sections 81 to 84, which allocative baseline any person carrying out the activity must use when calculating an allocation entitlement under those sections (which may include an allocative baseline that a particular person must use):

(d) prescribing—

(i) an allocation factor or factors for—

(A) electricity;

(B) natural gas feedstock;

(ii) how each allocation factor must be used for the purpose of calculating allocative baselines in accordance with section 161B(3):

(d) prescribing an allocation factor or factors for—

(i) electricity;

(ii) natural gas feedstock;

(c) prescribing information that must be kept for the purposes of section 86D.

(2) A regulation made under subsection (1) may permit persons to apply for and receive an allocation in respect of a period beginning on—

(a) 1 January of the year in which the regulation is made even if the regulation comes into force on a later date in that year;

(b) 1 January or 1 July in a year before the year in which the regulation is made provided the regulation comes into force on or before 31 December 2012.

(3) The Minister may recommend that regulations be made under subsection (1)(a) that prescribe an activity as an eligible industrial activity if the Minister is satisfied that the activity—

(a) is—

(i) moderately emissions-intensive or highly emissions-intensive, and

(ii) trade-exposed; or

(b) is an Australian eligible industrial activity.

(3) The Minister may recommend that regulations be made under subsection (1)(a) that prescribe an activity as an eligible industrial activity if the Minister is satisfied that the activity is—
moderately emissions-intensive or highly emissions-intensive; and
(b) trade-exposed.

(4) Despite anything in this section or section 161B or 161C, a regulation may not be made under subsection (1) that prescribes electricity generation as an eligible industrial activity.

(5) The following regulations made under subsection (1) come into force on the day 5 years after the date of their notification in the Gazette or any later date that may be set by the regulations:
(a) a regulation that revokes a regulation prescribing an activity as an eligible industrial activity:
(b) a regulation that amends a regulation providing that an eligible industrial activity is highly emissions-intensive to provide that the eligible industrial activity is moderately emissions-intensive.

161B Australian eligible industrial activities

(1) [Repealed]

(2) Any regulations that prescribe an activity as an eligible industrial activity under section 161A(3)(b) must prescribe—
(a) the same activity description for the activity, including (but not limited to) the matters listed in section 161A(1)(b)(i), as the activity description for the Australian eligible industrial activity; and
(b) the same products to be used as a basis for an allocation of New Zealand units in respect of the activity as the products that are, or are likely to be, used as a basis for the allocation of emissions units in respect of the Australian eligible industrial activity; and
(c) the same emissions-intensity level of the activity as the emissions-intensity level, or the likely emissions-intensity level, of the Australian eligible industrial activity; and
(d) for each prescribed product of the activity an allocative baseline or baselines that is or are the same as the allocative baseline or baselines that is or are, or is likely to be or are likely to be, specified as the allocative baseline or baselines of the equivalent product of the Australian eligible industrial activity.

(3) Despite subsection (2)(d), if an Australian electricity allocation factor or Australian natural gas feedstock allocation factor was used in the calculation of an allocative baseline (or likely allocative baseline) of a product of the Australian eligible industrial activity, then the allocative baseline or baselines prescribed under section 161A(1)(e) for the equivalent product must be the allocative baseline or baselines that is or are, or is likely or are likely, to be specified as the allocative baseline or baselines of the product of the Australian eligible industrial activity adjusted by substituting an electricity allocation factor or nat-
ural gas feedstock allocation factor (as the case may be) prescribed under section 161A(1)(d).

161C Other eligible Eligible industrial activities

(1) For the purposes of section 161A(3)(a) section 161A(3), an activity is—

(a) moderately emissions-intensive if the specified emissions from the activity are equal to or greater than 800 whole tonnes per $1 million of specified revenue from the activity, but less than 1 600 whole tonnes per $1 million of specified revenue from the activity;

(b) highly emissions-intensive if the specified emissions from the activity are equal to or greater than 1 600 whole tonnes per $1 million of specified revenue from the activity:

(c) trade-exposed unless, in the Minister’s opinion,—

(i) there is no international trade of the output of the activity across oceans; or

(ii) it is not economically viable to import or export the output of the activity.

(2) If an activity meets the criteria in section 161A(3)(a) section 161A(3) in accordance with subsection (1), any regulations that prescribe the activity as an eligible industrial activity and the products to be used as the basis for an allocation of New Zealand units in respect of the activity must prescribe the allocative baseline or baselines of each product, calculated in accordance with the following formula:

\[ AB = \frac{SE}{STA} \]

where—

AB is the allocative baseline of the product
SE is the specified emissions from the activity
STA is the specified total amount of the product from the activity.

(3) For the purposes of this section,—

(a) the specified revenue from an activity is the amount of revenue obtained by adding together the revenue from the activity of persons who provided the information referred to in section 161D(1)(e)(i)(A) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity:

(b) the specified emissions, in respect of the emissions intensity of an activity, is the number of whole tonnes of included emissions obtained by adding together the included emissions from the activity of persons who provided the information referred to in section 161D(1)(e)(i)(B) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity:
(c) the specified emissions, in respect of the allocative baselines of an activity, is the number of whole tonnes of included emissions obtained by adding together the included emissions from the activity of persons who provided the information referred to in section 161D(1)(e)(i)(C) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity:

(d) the specified total amount of product from the activity is the amount of the product obtained by adding together the amount of the product produced by each person who provided the information referred to in section 161D(1)(e)(i)(D) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity.

(4) Despite subsection (3)(c), the Minister may adjust the number of whole tonnes of included emissions shown in the information referred to in section 161D(1)(e)(i)(C) provided by any persons carrying out an activity specified in a notice given under section 161D(1) after taking into account any electricity-related contract that was in force on the date of the notice that affects the electricity cost increase that any of the persons will face due to the obligation imposed by this Act on participants to surrender units, or any information relating to any such contracts.

(5) If the Minister has adjusted the tonnes of emissions of 1 or more persons under subsection (4), the Minister may use both the information as originally submitted and as adjusted to calculate different allocative baselines for the relevant product.

161D Power to require information for purposes of allocation to industry

(1) The Minister may, for any of the purposes in subsection (3), by notice in the Gazette—

(a) specify a description of an activity, including the matters listed in section 161A(1)(b)(i) in respect of the activity:

(b) specify in respect of the activity each product that may be used, if the activity is prescribed in regulations as an eligible industrial activity, as the basis for an allocation of New Zealand units in respect of the activity (a specified product):

(c) specify in respect of the activity—

(i) the emissions that must be included in any information provided under paragraph (e) (the included emissions); and

(ii) the emissions that may not be included in any information provided under paragraph (e) (the excluded emissions):

(d) specify the financial years for which information must be provided under paragraph (e):

(e) require any person carrying out the activity specified under paragraph (a) on the date of the notice to provide to the Minister—
(i) any or all of the following information for the financial years specified in the notice:

(A) financial statements that show the total revenue of the person from the activity in those years, calculated in accordance with any methodology specified under paragraph (g)(i):

(B) information showing the number of whole tonnes of included emissions from the activity carried out by the person in those years, calculated in accordance with any methodology specified under paragraph (g)(ii) (emissions-intensity):

(C) information showing the number of whole tonnes of included emissions from the activity carried out by the person in those years, calculated in accordance with any methodology specified under paragraph (g)(iii) (allocative baselines):

(D) information showing the amount of each specified product produced by the person in those years calculated in accordance with any methodology specified under paragraph (g)(iv):

(ii) copies of any electricity-related contracts in force on the date of the notice that affect the electricity cost increase that the persons carrying out the activity will face owing to the obligation imposed by this Act on participants to surrender units, or any information in relation to such contracts:

(iii) any other information that would, in the Minister’s opinion, assist the Minister to determine any of the matters listed in subsection (3):

(f) specify the date by which the information required to be provided under paragraph (e) must be provided to the Minister, which date must be no earlier than 30 working days from the date of the notice:

(g) specify a methodology or methodologies for calculating—

(i) revenue from the activity for the purpose of paragraph (e)(i)(A):

(ii) emissions from the activity (emissions-intensity) for the purpose of paragraph (e)(i)(B):

(iii) emissions from the activity (allocative baselines) for the purpose of paragraph (e)(i)(C):

(iv) the amount of any specified product from the activity for the purpose of paragraph (e)(i)(D).

(2) A methodology specified in a notice in accordance with subsection (1)(g) may incorporate by reference any material referred to in section 169(1), and if material is incorporated by reference, sections 169(2) and (3), 170, and 177 apply with any necessary modifications.
(3) The purpose for which a notice may be issued under subsection (1) is to provide the Minister with the information necessary to determine any 1 or more of the following matters:

(a) whether an activity meets the criteria listed in section 161A(3) and, if so, determine—

(i) whether the activity is highly emissions-intensive or moderately emissions-intensive; and

(ii) the appropriate allocative baseline or baselines for each product of the activity:

(b) whether it is necessary to adjust any person’s number of whole tonnes of included emissions provided under subsection (1)(e)(i)(C) in accordance with section 161C(4):

(c) any other matter listed in section 161A(1) in respect of an activity:

(d) whether any matter should be considered by a review under section 160.

(4) A Gazette notice under subsection (1) is 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.

(5) Following the provision of information by any person in accordance with subsection (1)(e), the Minister may give notice to the person—

(a) requiring the person to provide any further information that the Minister considers is necessary to enable the verification of the accuracy of the information; and

(b) specifying the date by which the further information specified in the notice must be provided to the Minister.

(6) If a person who is required to comply with a notice under subsection (1) or (5) fails to provide the required information by the date specified in the notice, the Minister may give a notice to the person that requires the information to be provided within 10 working days and advises the person that a failure to provide the information within that time period will render the person ineligible for an allocation of New Zealand units in respect of the activity specified in the notice if it is prescribed as an eligible industrial activity.

(7) Despite anything in this Act, if an activity specified in a notice made under subsection (1)(a) is subsequently prescribed as an eligible industrial activity, the following persons are not eligible to be allocated New Zealand units under subpart 2 in respect of the eligible industrial activity:

(a) any person who carried out the activity at the date of the notice and who without reasonable excuse failed to supply the data and information required by the date specified in a notice given under subsection (6); and

(b) any associated person of a person referred to in paragraph (a).
161E Requirements in respect of notice given under section 161D

(1) Before giving notice of an activity under section 161D(1), the Minister must have regard to the following matters:

(a) the requirement to define each activity by reference to a physical, chemical, or biological transformation of inputs into outputs; and

(b) the undesirability of activities being defined by reference to the technology employed, the fuel used, the age of the plant, or the quality of the types of feedstock used when the activity is carried out; and

(c) the desirability of defining activities—
   (i) consistently and equitably across industries; and
   (ii) in a way that takes into account the impact that definitions may have on business investment, geographical location, and the structure of activities; and
   (iii) in a way that takes into account the potential for intermediate inputs produced when the activity is carried out to be substituted for bought-in inputs; and

(d) the desirability of there being no overlap between activity definitions; and

(e) the desirability of activity definitions reflecting activity definitions used in Australia; and

(f) any other matters the Minister considers relevant.

(2) For the purposes of section 161D(1)(c),—

(a) the emissions that must be included in any information provided under section 161D(1)(e)(i)(B) and (C) may only include—
   (i) emissions of greenhouse gases resulting from—
      (A) the direct use of any coal, natural gas, geothermal fluid, used oil, or waste oil as part of the activity; and
      (B) the direct use of any coal, natural gas, geothermal fluid, used oil, or waste oil to generate steam that is used as part of the activity; and
      (C) any of the activities listed in Part 4 of Schedule 3 carried out as part of the activity; and
      (D) the direct use of any liquid fossil fuel in stationary equipment; and
      (E) fugitive coal seam gas from coal that is used as part of, or to generate steam that is used as part of, the activity; and
   (ii) a number of whole tonnes of emissions, which must be treated for the purpose of this section and sections 161C and 161D as emis-
sions from the activity, calculated in accordance with the following formula:

\[ E = \text{MWh} \times pEAF \]

where—

E is the number of whole tonnes of emissions from the activity that may be included in any information submitted under section 161D(1)(e)(ii) and (iii)

MWh is the number of megawatt hours of electricity used when the activity is carried out

pEAF is a prescribed electricity allocation factor; and

(b) the emissions that may not be included in any information provided under section 161D(1)(e)(ii) and (iii) must include (but are not limited to) emissions resulting from—

(i) the use of machinery and equipment, and other processes, that are not integral to, nor essential to, the physical, chemical, biological, or other transformation taking place when the activity is carried out; and

(ii) any extraction or production of raw materials that are subsequently used when the activity is carried out; and

(iii) the transportation of inputs used in the activity to storage at the location where the activity is carried out; and

(iv) the transportation of outputs of the activity from storage at the location where the activity is carried out to another location; and

(v) the transportation of intermediate products between different locations where the activity is carried out; and

(vi) operations that are complementary to the activity, including (but not limited to) packaging, head office operations, and administration and marketing (whether carried out at the same location where the activity is carried out or at another location); and

(vii) the generation of electricity at the location where the activity is carried out; and

(c) before giving notice of the emissions that must be included in, or excluded from, any information provided in accordance with a notice issued under section 161D, the Minister must have regard to the following matters:

(i) the matters listed in subsection (1); and

(ii) the desirability of all notices given under section 161D being consistent with respect to the classes of included and excluded emissions that are specified in the notices.
Climate Change Response Act 2002
Unofficial version showing amendments proposed by
Climate Change Response (Emissions Trading Reform)
Amendment Bill (as introduced)

Part 4 s 161F

(3) If an activity specified in a notice under section 161D was carried out by any person in each of the financial years 2006/07, 2007/08, and 2008/09, then the notice must specify those financial years as the financial years for which information must be provided in accordance with the notice.

161F Consultation on activities that may be prescribed as eligible industrial activities

(1) If an activity is treated as meeting the criteria specified in section 161A(3)(a) because it is an Australian eligible industrial activity, then before recommending the making of a regulation under section 161A prescribing the activity as an eligible industrial activity, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those 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) Before notifying an activity in the Gazette under section 161D, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or the representatives of the persons) that appear to the Minister or the chief executive likely to be substantially affected by the description of the activity to be notified.

(3) The process for consultation under subsection (1) and (2)—The process for consultation under subsection (2) must include—

(a) giving adequate and appropriate notice of the proposed terms and conditions of the recommendation or the notice and the reasons for them; and

(b) the provision of a reasonable opportunity for interested persons to consider the proposed terms and conditions of the recommendation or the notice and make submissions; and

(c) adequate and appropriate consideration of submissions.

(4) A failure to comply with this section does not affect the validity of—

(a) any regulations made under section 161A; or

(b) any Gazette notices issued under section 161D.

(5) The Minister is not required to consult under subsection (2) if the Minister issues a notice under section 161D for the sole purpose of requiring persons to provide electricity-related contracts or any information related to those contracts.

161G Regulations in relation to eligible agricultural activities

(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 in respect of each eligible agricultural activity, as appropriate,—

(i) the product or products of the activity:
(ii) an allocative baseline for each product:

(b) prescribing, for the purpose of subsection (2),—

(i) a methodology or methodologies for calculating—

(A) the total number of tonnes of methane and nitrous oxide emissions that resulted from the eligible agricultural activity carried out to produce the prescribed product or products in the prescribed years; and

(B) the total amount of each prescribed product produced from the eligible agricultural activity in the prescribed years; and

(ii) the year or years for the purposes of subparagraph (i):

(c) prescribing a methodology or methodologies for calculating the amount of any prescribed product of an eligible agricultural activity for the purposes of sections 85 and 161H:

(d) prescribing information that must be kept for the purposes of section 86D.

(2) For the purposes of subsection (1)(a)(ii), the allocative baseline for each prescribed product of an eligible agricultural activity must be calculated using the following formula:

\[ AB = \frac{\sum E}{\sum PDCT} \]

where—

AB is the allocative baseline for the product

E is the total number of tonnes of methane and nitrous oxide emissions that resulted from the eligible agricultural activity carried out to produce the product in the prescribed year or years, calculated in accordance with methodologies prescribed in regulations made under this Act

PDCT is the total amount of the product produced from the eligible agricultural activity in the prescribed year or years, calculated in accordance with methodologies prescribed in regulations made under this Act

\( \sum \) is the symbol for the summation of E for the year or years for which E must be calculated (as prescribed by regulations made under this Act) and of PDCT for the year or years for which PDCT must be calculated (as prescribed in regulations made under this Act).

(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 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.

(4) The process for consultation under subsection (3) must include—
(a) giving adequate and appropriate notice of the proposed allocative baseline or baselines and the reasons for them; and
(b) the provision of a reasonable opportunity for interested persons to consider the proposed allocative baseline or baselines and make submissions; and
(c) adequate and appropriate consideration of submissions.

(5) A failure to comply with subsections (3) and (4) does not affect the validity of any regulations made under subsection (1).

(6) Despite section 4, in this section and section 161H, eligible agricultural activity—

(a) means any activity or subclass of any activity listed in Part 5 of Schedule 3; but
(b) excludes any activity or subclass of any activity listed in subpart 2 or 4 of Part 5 of Schedule 3, unless an Order in Council has been made under section 2A(8) or (9) in respect of any such activity or subclass of activity.

161H Power to request information showing output from eligible agricultural activities

(1) The Minister may, after 1 January 2011, by notice in the Gazette,—

(a) specify an eligible agricultural activity in respect of which information must be provided under paragraph (d):
(b) specify, in respect of the eligible agricultural activity specified under paragraph (a), the product or products of the eligible agricultural activity in respect of which the information must be provided under paragraph (d):
(c) specify the year or years for which information must be provided under paragraph (d):
(d) require any person carrying out the eligible agricultural activity on the date of the notice to provide to the Minister information that shows the amount of each specified product from the activity specified by the person in the year or years specified in the notice, determined (if relevant) in accordance with any prescribed methodologies:
(e) specify the date by which the information specified in the notice must be provided to the Minister, which must be no earlier than 30 working days from the date of the notice.

(2) If a person who is required to comply with a notice given under subsection (1) fails to provide the required information by the date specified in the notice, the Minister may give written notice to the person that requires the information to be provided within 10 working days and advises the person that a failure to
provide the information within that time period will render the person ineligible for an allocation of New Zealand units in respect of the activity.

(3) Despite anything in this Act, if notice is given under subsection (1) requiring a person to provide information with respect to an eligible agricultural activity, the following persons are not eligible to be allocated New Zealand units under subpart 2 in respect of the eligible agricultural activity:

(a) any person who—

(i) carried out the activity at the date of the notice given under subsection (1); and

(ii) failed, without reasonable excuse, to supply the data and information required by the date specified in the notice given under subsection (2); and

(b) any associated person of a person referred to in paragraph (a).

(4) A Gazette notice under subsection (1) is 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.

162 Regulations adding further activity to Part 2 of Schedule 4

(1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, amend Part 2 of Schedule 4 by adding a further activity to that Part.

(2) Before making a recommendation under subsection (1), the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any Order in Council made in accordance with the recommendation.

(3) The process for consultation should, to the extent practicable in the circumstances, include—

(a) giving adequate and appropriate notice of—

(i) the proposed terms of the recommendation; and

(ii) the reasons for it; and

(b) the provision of a reasonable opportunity for interested persons to consider the recommendation and make submissions; and

(c) adequate and appropriate consideration of submissions.

(4) An Order in Council made under subsection (1) takes effect for the removal activity or activities concerned on and from—

(a) 1 January of the next year, if made on or before 30 June in any year; or

(b) 1 July of the next year, if made on or after 1 July in any year.
162A Orders are confirmable instruments

The explanatory note of an Order in Council made under section 162(1) must indicate that—

(a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
(b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
(c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

163 Regulations relating to methodologies and verifiers

(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 data or other information that must be collected under section 62(a) in respect of an activity, and, if relevant, the mechanism or method by which the data or information must be collected; and

(ab) authorising, in respect of an activity listed in Part 1 or 1A of Schedule 3 or Part 1 of Schedule 4 a forestry activity, the EPA to specify the location where, and the device by which, the data or other information prescribed in accordance with paragraph (a) must be collected; and

(b) prescribing a methodology or methodologies for calculating emissions or removals from an activity for the purposes of section 62(b); and

(c) prescribing the data or other information, or the calculations of emissions or removals, that must be verified by a person or organisation recognised by the EPA under section 92; and

(d) authorising the EPA to issue guidelines or standards by notice in the Gazette in relation to—

(i) the matters prescribed under paragraph (a); and

(ii) the method and format for determining the spatial extent of an area of forest land; and

(e) prescribing, for the purposes of section 92,—

(i) the process by which a person or organisation may be recognised as being able to verify information or calculations for the purposes of section 62(a) or (c) or unique emissions factors for the purposes of regulations made under section 164; and

(ii) the expertise, technical competence, or qualifications required for recognition as a person or organisation able to verify unique emissions factors or information relating to 1 or more types of data or
information, the calculations of certain types of emissions or removals, or 1 or more activities; and

(iii) any additional—

(A) requirements for recognition of an organisation; and

(B) restrictions on the employees of the organisation who may carry out the duties of the organisation in respect of the recognition; and

(iv) the period for which a person or organisation may be recognised, and the process for the renewal of recognition; and

(v) conditions of recognition, which may include (but are not limited to) ongoing competency and professional standard requirements, membership of a professional body, and the provision of reports to the EPA; and

(vi) the procedure for, and circumstances in which, recognition may be suspended or revoked; and

(vii) fees to enable the recovery of the direct and indirect costs of the EPA in recognising a person or organisation, which may vary depending on the class of persons or organisations, or the type of verification in respect of which recognition is sought.

(2) A regulation made under subsection (1) may apply—

(a) generally or with respect to different classes of activity, persons, parts of New Zealand, or other things; or

(b) in respect of the same classes of activity, persons, parts of New Zealand, or other things, in different circumstances; or

(c) generally or at any specified time of each year.

(3) A regulation made under subsection (1)(a) to (d) may have retrospective effect if the regulation is expressed to apply from the commencement of the year in which it is made, or in respect of a period after any particular date within the year in which it is made.

(4) A regulation made under subsection (1)(b), and any associated regulations made under other paragraphs of subsection (1),—

(a) may, without limiting subsection (1), relate to emissions or removals that—

(i) stem directly from an activity; or

(ii) are associated with a product or other thing that is the subject of the activity; and

(b) may require the use of a computer programme available via the Internet site of the EPA; and
must not cover any emissions in respect of which another person is required to surrender units or any removals of greenhouse gases in respect of which another person is entitled to a transfer of New Zealand units under this Act.

(5) In making a recommendation in relation to a regulation under subsection (1)(a) or (b), the Minister must have regard to New Zealand’s international obligations (if any) in respect of the collection of data and information relating to, and the measurement of, emissions and removals from the activity.

(6) Any guidelines or standards issued by the chief executive under regulations made under subsection (1)(d) 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.

(7) A person who has complied with guidelines or standards issued by the EPA in regulations made under subsection (1)(d) 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.

164 Regulations relating to unique emissions factors

If regulations made under section 163(1)(b) require emissions or removals to be calculated by reference to a default emissions factor, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—

(a) providing for a process by which a participant may apply to the EPA for approval to use a unique emissions factor;

(b) prescribing the information that must be collected to support an application for use of a unique emissions factor;

(c) prescribing the criteria for a unique emissions factor, which may include (but are not limited to)—

(i) the percentage by which a unique emissions factor must vary from the default emissions factor, before an application for a unique emissions factor may be made:

(ii) the types of greenhouse gases to be reflected in the unique emissions factor:

(iii) how the unique emissions factor is to be calculated:

(iv) any criteria by which the default emissions factor has been set, that reflect the matters in section 163(4):

(v) a requirement that the unique emissions factor be verified by a recognised verifier.
165 Regulations relating to offsetting of pre-1990 forest land
[Repealed]

166 Procedure for regulations relating to methodologies, verification, unique emissions factors, and offsetting

(1) Before making a recommendation for the making of regulations under section 163, 164, or 186F–185A, 186F, 194LA, 194TA, or 196G, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulations made in accordance with the recommendation.

(2) The process for consultation must include—
   (a) giving adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and
   (b) the provision of a reasonable opportunity for interested persons to consider the recommendation and make submissions; and
   (c) adequate and appropriate consideration of submissions.

(3) Regulations referred to in this section come into force 3 months after the date of their notification in the Gazette or any later date that may be set out in the regulations.

(4) A failure to comply with this section does not affect the validity of regulations made under section 163, 164, or 186F the regulations.

(5) Subsection (3) does not apply to any regulations made under sections 163 (in relation to the forestry sector) and 186F on or before 1 January 2013.

167 Regulations relating to fees and charges

(1) The Governor-General may, by Order in Council, make regulations prescribing the amount of any fees payable under this Part or Part 5 the ETS participant provisions and the procedures for payment.

(2) The Governor-General may, by Order in Council, make regulations prescribing the fees or charges payable by a person—
   (a) who has made an application for an emissions ruling under section 107, to enable the recovery of all or part of the direct and indirect costs of the EPA in—
      (i) receiving and processing the application; and
      (ii) considering whether to make the ruling, making the ruling, or declining to make the ruling; or
   (b) who is a participant, or who has applied to be a participant, in respect of an activity listed in Part 1 or 2 of Schedule 4, to enable the recovery of all or part of the direct and indirect costs of the EPA in—
publicising and informing people about the operation of this Part and Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4:

(ii) administering the operation of this Part and Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4:

(iii) enforcing and monitoring compliance with this Part or Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4:

(iv) doing anything else authorised or required under this Part or Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4.

(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 194UA, 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 194UB.

(3) Examples of the costs that may be recovered under subsection (2) include (but are not limited to)—

(a) the cost of processing applications and returns:

(b) the costs of providing, operating, and maintaining systems, databases, and other processes in connection with—

(i) the making of emissions rulings; or

(ii) the administration of this Part or Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4:

(ii) the administration of the ETS participant provisions in relation to a removal activity; or

(iii) input returns:

(c) the costs of services provided by third parties.

(4) Regulations made under subsection (2) may—

(a) specify the persons or classes of persons by whom any fees and charges prescribed or fixed are payable; and
(b) provide for partial cost recovery from one class of persons and full cost recovery from another (if this is desirable to further the purposes of this Act); and

d) prescribe a scale of fees and charges, or a rate based on the time involved in carrying out the function or duty or in exercising the power; and

e) prescribe a scale of fees and charges, or a fee or charge for a prescribed function, power, or duty; and

(f) prescribe a formula for fixing fees and charges; and

(g) prescribe an annual fee or charge, or classes of fees or charges, payable by participants or classes of participants; and

(h) prescribe the time of payment of fees and charges, the means of collection of fees and charges, and the person who is responsible for paying a fee or charge; and

(i) authorise the EPA to recover the full costs of services from third parties (other than services in respect of which a fee or charge is prescribed) in circumstances prescribed in the regulations; and

(j) authorise the EPA to grant, in whole or in part, an exemption, waiver, or refund in relation to any fee or charge.

(5) Subsection (2) is subject to sections 173(2) and 174(1) (which relate to material incorporated by reference).

168 Other regulations

(1) The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes:

(a) specifying the fuel that is obligation fuel and the jet fuel that is obligation jet fuel for the purposes of this Act; and

(b) prescribing matters in respect of which applications for emissions rulings may be made; and

(c) [Repealed]

(ca) prescribing a date by which an application to the EPA must be submitted under section 183; and

(d) prescribing forest species that are tree weeds; and

(e) prescribing criteria for carbon accounting areas; and

(f) requiring notification by the EPA of the status of forest land or any changes to the status of forest land under section 195; and
(g) providing for the circumstances in which a notice of the status of forest land must be cancelled by the Registrar-General of Land, a Registrar of the Maori Land Court, or the Registrar of Deeds; and

(h) [Repealed]

(i) [Repealed]

(j) prescribing a format or formats for the keeping of records under section 62(4)--section 62(1)(d); and

(k) prescribing the form and manner in which any application, return, information, or other document must be submitted or notified under this Part and Part 5—the ETS participant provisions, and the particulars to be provided in the application, return, or other document; and

(l) prescribing the information that must be provided in or with applications or other documents under this Part and Part 5—the ETS participant provisions; and

(m) prescribing a threshold for the purposes of any removal activity listed in Part 2 of Schedule 4; and

(n) prescribing criteria for registering as a participant in relation to an activity listed in—

(i) subpart 1 of Part 2 of Schedule 4; and

(ii) subpart 2 of Part 2 of Schedule 4, which may include criteria for the type of carbon dioxide capture and storage in respect of which a person may register as a participant; and

(iii) subpart 3 of Part 2 of Schedule 4; and

(na) 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 194CB(2)(c);

(ii) an application to change activity on post-1989 forest land, for the purposes of section 194DB(2)(d); and

(nb) prescribing rules for the rounding of amounts of units calculated under, or referred to in, this Act; and

(nc) 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

(o) providing for any other matters contemplated by this Part and Part 5—the ETS participant provisions or Schedules 3 and 4, necessary for their administration, or necessary for giving them full effect.

(2) The power to prescribe the form of any application, return, information, or other document under subsection (1) includes the power to prescribe an electronic format to be used for the electronic transmission of data to or between computers.
**169 Incorporation by reference in regulations made under section 163, 164, 167, or 168—certain regulations**

(1) The following written material may be incorporated by reference in regulations made under section 163, 164, 167, or 168—a relevant empowering section:

(a) decisions, computer programmes, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters; and

(b) any standards, requirements, or recommended practices of a government agency, standard-setting organisation, or professional body.

(2) Material may be incorporated by reference in regulations—

(a) in whole or in part; and

(b) with modifications, additions, or variations specified in the regulations.

(3) Material incorporated by reference in regulations has legal effect as part of the regulations.

(4) In this section and sections 170 to 174, relevant empowering section means section 161A, 161G, 163, 164, 167, 168, 185A, 186F, 194EG, 194LA, 194TA, 194UC, 196G, or 197A.

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

An amendment to, or replacement of, material incorporated by reference in regulations (regulations A) has legal effect as part of regulations A 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.

**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—
(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).

171 Proof of material incorporated by reference

(1) A copy of any material incorporated by reference in regulations, including any amendment to, or replacement of, the material (material) must be—

(a) certified as a correct copy of the material by the chief executive; and

(b) retained by the chief executive.

(2) The production in proceedings of a certified copy of the material incorporated by reference is, in the absence of evidence to the contrary, sufficient evidence that the material produced is the material incorporated by reference in regulations.

172 Effect of expiry of material incorporated by reference

Material incorporated by reference in regulations that expires, or that is revoked or that ceases to have effect, ceases to have legal effect as part of the regulations only if regulations made under section 163, 164, 165, 167, or 168 as may be applicable state that the material ceases to have legal effect.

173 Requirement to consult

(4) This section applies to regulations made under section 163, 164, 165, 167, or 168 that—

(a) incorporate material by reference; or

(b) state that an amendment to, or replacement of, material incorporated by reference in regulations has legal effect as part of the regulations.

(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 replace-
ment of, material incorporated by reference in regulations has legal
effect as part of the regulations.

(2) Before regulations to which this section applies are made, the chief executive
must—

(a) make copies of the material proposed to be incorporated by reference, or
the proposed amendment to or replacement of material incorporated by
reference (proposed material), available for inspection during working
hours for a reasonable period, free of charge, at the office of the chief
executive; and

(b) make copies of the proposed material available for purchase at a reason-
able price; and

(c) give notice in the Gazette stating—
   (i) that the proposed material is available for inspection during work-
ing hours, free of charge; and
   (ii) the place where the proposed material can be inspected, and the
        period during which it can be inspected; and
   (iii) that copies of the proposed material can be purchased; and
   (iv) the place where the proposed material can be purchased; and

(d) allow a reasonable opportunity for persons to comment on the proposal
to incorporate the proposed material by reference; and

(e) consider any comments these persons make.

(3) The reference in subsection (2) to the proposed material includes, if the
material is not in an official New Zealand language, an accurate translation of
the material in an official New Zealand language.

(4) Before regulations to which this section applies are made, the chief execu-
tive—

(a) may make copies of the proposed material available in any other way
that the chief executive considers appropriate in the circumstances (for
example, via an Internet site); and

(b) must, if paragraph (a) applies, give notice in the Gazette stating that the
proposed material is available in other ways and details of where or how
it can be accessed or obtained.

(5) A failure to comply with this section does not invalidate regulations that
incorporate material by reference.

174 Public access to material incorporated by reference

(1) The chief executive—
(a) must make the material specified in subsection (2) (material) available for inspection during working hours, free of charge, at the office of the chief executive; and

(b) must make copies of the material available for purchase at a reasonable price at the office of the chief executive; and

(c) may make copies of the material available in any other way that the chief executive considers appropriate in the circumstances (for example, via an Internet site); and

(d) must give notice in the Gazette stating—

(i) that the material is incorporated in the regulations and the date on which the regulations were made; and

(ii) 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

(iii) that the material is available for inspection during working hours, free of charge; and

(iv) the place where it can be inspected; and

(v) that copies of the material can be purchased; and

(vi) the place where the material can be purchased; and

(vii) that, if copies of the material are made available under paragraph (c), the material is available in other ways and the details of where or how the material can be accessed or obtained.

(2) The material is—

(a) material incorporated by reference in regulations made under section 163, 164, 165, 167, or 168 a relevant empowering section:

(b) any amendment to, or replacement of, that material that is incorporated in the regulations or the material specified in paragraph (a) with the amendments or replacement material incorporated:

(c) if the material specified in paragraph (a) or (b) is not in an official New Zealand language, an accurate translation of the material in an official New Zealand language.

(3) A failure to comply with this section does not invalidate regulations that incorporate material by reference.

175 Application of Legislation Act 2012 to material incorporated by reference

(1) Part 2 of the Legislation Act 2012 does not apply to material incorporated by reference in regulations or to an amendment to, or replacement or a replacement of, that material.
(2) Material incorporated by reference in regulations does not have to be presented to the House of Representatives under section 41 of the Legislation Act 2012.

176 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference

[Repealed]

177 Application of Standards and Accreditation Act 2015 not affected

Sections 169 to 176 do not affect the application of sections 29 to 32 of the Standards and Accreditation Act 2015.

178 Recovery of fees or charges

(1) A fee or charge that is not paid in accordance with regulations made under this Part may be recovered from the person liable to pay the fee or charge by the EPA in any court of competent jurisdiction.

(2) The EPA may enter into any agreement or arrangement, on any terms that the EPA thinks fit, with any person to collect, or assist in the collection of, any fees or charges that are payable.

178A Option to pay money instead of surrendering units to cover emissions, repaying, or reimbursing units

(1) This section applies if—

(a) a person is required to surrender or repay units—

(i) under section 65(4), 118(5), 189(8), or 193 for emissions from any activity; or

(ii) under section 183A(2)(b), 187, or 191; or

(b) the EPA is required under section 123(4), 186H, 187, 189(7)(d), or 191 to arrange for the reimbursement of units—

(i) for emissions from any activity; or

(ii) because approval is revoked or the offsetting forest land has not become pre-1990 offsetting forest land before deforestation of the relevant pre-1990 forest land.

(2) Despite anything in this Act, if this section applies, a person may satisfy the person’s obligation to surrender, repay, or reimburse units,—

(a) in the case of a person other than the EPA, by—
(i) surrendering or repaying the units in accordance with section 65(4), 118(5), 183A(2)(b), 186H, 187, 189(8), 191, or 193, as applicable the relevant provision; or

(ii) paying a sum of $25 for each unit that the person is liable to surrender or repay, into a Crown Bank Account, by the date or within the period by which the units are required to be surrendered or repaid; or

(iii) a combination of the actions provided for in subparagraphs (i) and (ii); or

(b) in the case of the EPA, by—

(i) reimbursing units to a person in accordance with the procedure specified in section 124; or

(ii) paying a sum of $25 for each unit into a bank account designated by the person; or

(iii) a combination of the actions provided for in subparagraphs (i) and (ii).

(3) For the purposes of subsection (2)(a)(ii) and (iii), a person’s obligation to surrender units or repay units is only satisfied when the funds paid into a Crown Bank Account are cleared.

(4) For the purposes of subsection (3) and section 178B(1), funds paid into a Crown Bank Account are to be treated as cleared when it is no longer possible to reverse the payment and the funds are available for use by the Crown.

Amendment note:
This section is proposed to be repealed by Order in Council or on 1 January 2023 by clause 227 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

178B Issuing New Zealand units to meet surrender obligations

(1) If, in accordance with section 178A(2)(a)(ii) or (iii), a person pays a sum of $25 instead of surrendering a unit that the person is liable to surrender, the Registrar must, when the funds are cleared,—

(a) issue a number of New Zealand units into a Crown holding account equal to the number of units in respect of which the person has paid a sum of $25 for each unit; and

(b) transfer the New Zealand units into the person’s holding account held for the purpose of section 61(1); and

(c) immediately following the transfer under paragraph (b), transfer the New Zealand units to a surrender account designated by the EPA.

(2) The Registrar may, for the purposes of subsection (1)(a), issue a number of New Zealand units equal to the number of units in respect of which 1 or more
persons have paid a sum of $25 for each unit under section 178A(2)(a)(ii) or (iii).

(3) If the EPA is required to reimburse a person units under section 123(4), 186H, or 189(7)(d) by this Act to reimburse units to any person and has satisfied its obligation to do so by paying to the person a sum of $25 for each unit in accordance with section 178A(2)(b)(ii) or (iii), then the Registrar must—

(a) transfer from the appropriate surrender account to the person’s holding account held for the purpose of section 61(1) a number of New Zealand units equal to the number of units for which the EPA paid the person a sum of $25 for each unit; and

(b) immediately following the transfer under paragraph (a), transfer the New Zealand units from the person’s holding account to a cancellation account.

(4) For the avoidance of doubt, section 68 does not apply in respect of any New Zealand units issued under this section.

(5) If subsection (1) applies, this Act applies with any necessary modification as if the payment of $25 for a unit by a person and the transfer of a unit to a surrender account by the Registrar under this section were a surrender of a unit by the person.

(6) Despite anything in section 18CA(4)—

section 18CA(2), a New Zealand unit that is transferred to a surrender account under subsection (1)(c) may be further transferred in accordance with subsection (3)(a).

Amendment note:
This section is proposed to be repealed by Order in Council or on 1 January 2023 by clause 227 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

178C Prohibition on ability to export New Zealand units

(1) Despite anything in this Act,—

(a) an account holder may not apply to the Registrar under section 30E(1)(a) to convert a New Zealand unit held by that person into a designated assigned amount unit for the purposes of transferring that assigned amount unit to an account in an overseas registry; and

(b) the Registrar must not transfer to an account in an overseas registry under section 18C—

(i) New Zealand units; or

(ii) designated assigned amount units that have been converted from New Zealand units under section 30E(3) before the commencement of this section.

(2) This section does not apply to New Zealand units—
(a) in respect of activities listed in Part 1 of Schedule 4; or

(b) transferred in accordance with a determination of the Minister under section 77 or 78 that relates to an allocation under the pre-1990 forest land allocation plan; or

(e) received under the Forests (Permanent Forest Sink) Regulations 2007.

**Part 5**

**Sector-specific provisions**

**Subpart 1 — Forestry sector**

**General**

**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, the hectare has not—

(i) been replanted with at least 500 stems of forest species; or

(ii) regenerated a cover of at least 500 stems of exotic forest species; or

(iii) been replanted with at least 100 stems of willows or poplars in a manner consistent with managing soil erosion; or

(iv) regenerated 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

(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 at least 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 at least more than 30% from trees that have reached 5 metres in height.

(1A) Subsection (1)(a)(iii) 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.

(2) 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.

(3) 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 that is the subject of an offsetting forest land application that the EPA has approved under section 186B sub-
mitted under section 186A, the pre-1990 forest land that is cleared may not be treated as deforested if cleared,—

(i) in the case where the land is converted to a use other than forest land (for example, dairy), in the period—

(A) beginning on the date that the approval is given; and

(B) ending with the earlier of 2 years after the date that the approval was given or 4 years after the date that the pre-1990 forest land was cleared; or

(ii) in the case where the land is not converted to another land use and remains forest land, in the period—

(A) beginning on the date that the pre-1990 forest land was cleared; and

(B) ending 4 years after the date that the pre-1990 forest land was cleared;

(ii) in the case where the land is not converted to another land use and remains forest land, in the 4-year period beginning on the date that the pre-1990 forest land was cleared:

(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 registration—

(a) 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) Subsection (1)(b) does not apply if the EPA revokes its approval of an offsetting forest land application under section 186G(1).

(2) Subsection (1)(b) does not apply if—

(a) the EPA declines the application under section 186B; or

(b) after approving it, the EPA revokes its approval under section 186G(1).

(2A) If subsection (1)(c) applies (where land is cleared for forest management), see sections 188AB, 191AB, and 191BB.
(3) This section applies to land that was cleared before, on, or after the commencement of this section.

(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.

Pre-1990 forest land

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.

181 When deforestation to be treated as occurring in respect of pre-1990 forest land

(1) Subject to subsection (3), a landowner (or in the circumstances in section 180(2), a third party) converting a hectare of pre-1990 forest land to land that is not forest land, is to be treated as carrying out an activity listed in Part 1 of Schedule 3 on the date the hectare is cleared as part of the deforestation process.

(1A) The hectare of forest land is to be treated as 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) Subsection (3) applies to a landowner converting a hectare of pre-1990 forest land to land that is not forest land, is to be treated as carrying out an activity listed in Part 1 of Schedule 3 on the date the hectare is cleared as part of the deforestation process:

(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.
A landowner to whom this subsection applies is to be treated as carrying out an activity listed in Part 1 of Schedule 3 on the date of the first action on the hectare of pre-1990 forest land following—

(a) the date of transfer of the land that is inconsistent with the hectare remaining forest land; or

(b) the date of the expiry or termination of the forestry right, Crown forestry licence, lease, or other agreement relating to the land that is inconsistent with the hectare remaining forest land.

(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.

(4) This section applies only if section 4(5) does not apply.

(5) This section does not apply to pre-1990 forest land that is the subject of an offsetting forest land application that the EPA has approved under section 186B.

182 Offsetting in relation to 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 allocation plan referred to in section 72; or

(b) was the landowner of an area of pre-1990 forest land that was converted to land that is not forest land between 1 January 2008 and the date of issue of the allocation plan referred to in section 72 at the date of the land’s conversion.

(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 an allocation plan under section 72 of 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 183B,—

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.

183A Certain applications not otherwise permitted by section 183

(1) Despite section 183(2)(c) and (3)(a), a person may make an application under section 183 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 an allocation plan under section 72 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 New Zealand 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 an allocation plan under section 72 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 183 (as amended by the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012) 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 allocation plan the pre-1990 forest land allocation plan in respect of the land is cancelled.

Amendment note:
This section is proposed to be amended further on 30 November 2020 by clause 207 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

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
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 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.

184 Exemptions for deforestation of land with tree weeds

(1) The EPA may give public notice that exemptions are available in relation to the deforestation of pre-1990 forest land if—
(a) a forest species growing on the land, or that was cleared from the land as part of the deforestation process on or after 1 January 2008, is or was a specified type of tree weed; and

(b) no allocation of units to a landowner has been made in respect of the land under the pre-1990 forest land allocation plan.

(2) A notice given under subsection (1) must include—

(a) the types of tree weeds in respect of which exemptions may be available; and

(b) the criteria and priorities by which exemptions will be assessed, which may include the type of tree weed, the location of forest land, or any other matter; and

(c) the date by which applications for exemptions under this section must be received by the EPA; and

(d) the number of whole tonnes of emissions from the deforestation of the specified types of tree weed that will be covered by exemptions granted in relation to the notice.

(3) If a notice has been given under subsection (1), the landowner of pre-1990 forest land on which there is or was a specified type of tree weed or, in the circumstances referred to in section 180, a third party may apply to the EPA for the land to be declared exempt land.

(4) An application for an exemption under subsection (3) must—

(a) be submitted to the EPA before the date notified under subsection (2)(c); and

(b) be in the prescribed form and accompanied by the prescribed fee (if any); and

(e) contain details of the land to which the application relates; and

(d) be accompanied by evidence that—

(i) the land is pre-1990 forest land; and

(ii) a forest species growing on the land, or that grew on the land before it was cleared as part of the deforestation process, is or was a specified type of tree weed; and

(e) be signed by the applicant; and

(f) be accompanied by any other prescribed information.

(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.
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.

The EPA must consider 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) 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 (3); 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 accordingly.

The clearing of tree weeds on exempt land that has not been cleared before the land was declared exempt land must be—

(a) commenced within 24 months of the date of notification of the exemption; and

(b) completed by the end of—

(i) the first commitment period, if the exemption is granted in that commitment period; or
(ii) any subsequent commitment period in which the exemption is granted; or
(iii) if there is no subsequent commitment period,—

(A) the 5-year period commencing on 1 January 2013, if the exemption is granted in that 5-year period; or
(B) any subsequent 5-year period, after the period in subsub-paragraph (A), in which the exemption is granted.

Any land that is declared to be exempt land under this section ceases to be exempt land if either of the conditions specified in subsection (6) is breached.

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.

(8) 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) was an assessment under section 121.

(9) [Repealed]

185 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.

185A Regulations about exemptions for deforestation of land with tree weeds
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 184:

(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:
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 184 and 185, necessary for their administration, or necessary for giving them full effect.

186 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(b), section 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.

Pre-1990 offsetting forest land

Subpart 3—Pre-1990 offsetting forest land

186A Persons who own pre-1990 forest land may submit offsetting forest land applications to EPA

(1) A person who owns pre-1990 forest land may submit an offsetting forest land application to the EPA if that forest land—
(a) was first planted before 1 January 1990; or
(b) was harvested and re-established after 1 January 1960.

(2) If the proposed offsetting forest land and the pre-1990 forest land are owned by the same person, the application must be submitted by that person.

(3) In the case where the proposed offsetting forest land and the pre-1990 forest land are owned by different persons, the application must be submitted jointly by those persons.

(4) To avoid doubt, any pre-1990 forest land cleared, but not deforested, before the commencement of this section is eligible to be offset if that land meets the requirements specified in subsection (1).

186B Criteria for approving offsetting forest land applications

(1) The EPA must approve land as offsetting forest land if—

(a) the land—

(i) is the subject of an offsetting forest land application that—

(A) is in the prescribed form, and accompanied by the payment of any prescribed fee; and

(B) complies with any relevant regulations made under section 186F; and

(C) is accompanied by any other relevant information that the EPA may require; and

(ii) was—

(A) not forest land on or after 31 December 1989; or

(B) forest land on 31 December 1989 that was deforested between 1 January 1990 and 31 December 2007 and is (at the time the offsetting forest application is made) not forest land; or

(C) pre-1990 forest land (other than exempt land) that was deforested on or after 1 January 2008 and any liability in respect of it to surrender units in relation to the activity listed in Part 1 of Schedule 3 has been satisfied, and is (at the time the offsetting forest application is made) not forest land; or

(D) 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, and is (at the time the offsetting forest application is made) not forest land; or

(E) exempt land that has been deforested and in respect of which the number of units that would have been required to be surrendered in relation to the activity in Part 1A of
Schedule 3 had the land not been exempt land has been surrended, and is (at the time the offsetting forest application is made) not forest land; or

(F) offsetting forest land under an approved offsetting forest land application that was removed as offsetting forest land under section 186CA within the period prescribed in regulations made under section 186F; or

(G) excess forest land that ceased to be approved swap land under section 194JF(2)(e) within the period prescribed in regulations made under section 186F; or

(H) land of a kind described in sub-subparagraphs (A) to (E) that became post-1989 forest land within the 2 years before the offsetting forest land application is submitted; and

(aa) if any of the proposed offsetting forest land is land that is in a carbon accounting area, all of the land in the carbon accounting area is in part of the proposed offsetting forest land; and

(b) the land is land—

(i) that has a total area (whether or not contiguous) that is equal to or greater than the total area of the pre-1990 forest land that is to be offset by that land (whether or not contiguous); and

(ii) in which each individual parcel that makes up the total area of the offsetting forest land is at least 1 hectare with an average width of at least 30 metres; and

(c) the EPA is satisfied that the land is likely to—

(i) achieve carbon equivalence with the pre-1990 forest land that is to be offset by that land within the usual rotation period for forest species of the pre-1990 forest land; and

(ii) become or remain forest land before the pre-1990 forest land that is to be offset by that land is deforested; and

(d) any other requirements with respect to offsetting specified in this Act or regulations made under this Act are satisfied.

(2) The EPA may decline any application that does not meet all or any of the requirements specified in subsection (1).

(3) If the EPA approves offsetting forest land that includes any land in a carbon accounting area,—

(a) the participant for that carbon accounting area—

(i) is liable to surrender the number of New Zealand 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 EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this subsection.

(4) If the EPA declines an application, the provisions of this Act apply to the relevant pre-1990 forest land as if the relevant offsetting forest application had not been made (and therefore as if section 179A(1)(b) had not applied to it).

**Amendment note:**
This section is proposed to be amended further on 30 November 2020 by clause 208 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

### 186C Conditions applicable to offsetting forest land

(1) If the EPA approves an offsetting forest land application, the following conditions apply:

(a) the offsetting forest land must—

   (i) become or remain forest land before the relevant pre-1990 forest land is deforested; and

   (ii) be established by direct planting activities, including direct seeding but excluding natural forest regeneration; and

   (iii) be established on the land specified in the application approved by the EPA; and

   (iv) achieve carbon equivalence with the relevant pre-1990 forest land:

(b) the owner of the pre-1990 forest land must surrender or repay units if required to do so under section 186H:

(c) any relevant conditions prescribed by regulations made under section 186F must be satisfied.

(2) Subsection (1)(a)(i) is subject to section 179A(1)(b).

### 186CA Variation to approved offsetting forest land application

(1) The person who owns the pre-1990 forest land that is subject to an approved offsetting forest land application (the approved offset) may apply to the EPA to vary the approved offset only once before submitting a declaration under section 186D.

(2) The application to vary—

   (a) must propose to reduce the offsetting forest land; and

   (b) may also propose to reduce the pre-1990 forest land that is to be offset by that land.

(3) The EPA must approve the variation if—

   (a) the application to vary—
(i) is in the prescribed form, and accompanied by the payment of any prescribed fee; and

(ii) complies with any relevant regulations made under section 186F; and

(iii) is accompanied by any other relevant information that the EPA may require; and

(b) the EPA is satisfied that the offsetting forest land (as reduced) is likely to—

(i) achieve carbon equivalence with the pre-1990 forest land (as reduced, if applicable) that is to be offset by that land within the usual rotation period for forest species of the pre-1990 forest land; and

(ii) become or remain forest land before the pre-1990 forest land (as reduced, if applicable) that is to be offset by that land is deforested; and

(c) any other requirements with respect to offsetting specified in this Act or regulations made under this Act are satisfied.

(4) The EPA may decline a variation that does not meet all or any of the requirements specified in subsection (3).

(5) If the EPA approves the variation, the provisions of this Act apply—

(a) to the approved offset as if it had originally been approved as varied; and

(b) to any pre-1990 forest land that was removed in the reduction, as if the offsetting forest application had not been made in relation to that land (and therefore as if section 179A(1)(b) had not applied to it).

186D Requirements relating to offsetting forest land

(1) A person who owns pre-1990 forest land must submit a declaration to the EPA in the prescribed form, before the end of the relevant period specified in section 179A(1)(b), stating that the offsetting forest land has become or remained forest land.

(2) If the EPA is not satisfied that the land subject to an approved offsetting forest land application has become or remained forest land by the time that the relevant pre-1990 forest land is deforested,—

(a) the application is to be treated as revoked under section 186G; and

(b) the person who owns the pre-1990 forest land must surrender units for the deforested pre-1990 forest land.

(3) If the EPA is satisfied that the offsetting forest land has become or remained forest land by the time that the pre-1990 forest land is deforested, the EPA must, on a register kept for the purposes of this section, note—

(a) that the offsetting forest land is pre-1990 offsetting forest land; and
(b) any conditions placed on that forest land under section 186C or 186F; and
(c) the emissions for the relevant pre-1990 forest land.

(3A) If a person has submitted a declaration under subsection (1), before the EPA decides whether it is satisfied for the purposes of subsection (2) or (3), it may give notice to the owner giving them the option to vary the application under section 186CA if—
(a) some but not all of the offsetting forest land has become or remained forest land; and
(b) the person has not previously varied their approved offsetting forest land application under section 186CA.

(3B) A person given a notice under subsection (3A)—
(a) may apply to vary the application under section 186CA (even though they have submitted their declaration), subject to any conditions specified by the EPA in the notice; and
(b) if they do so and the variation is approved, may submit a revised declaration under subsection (1).

(4) The EPA must, upon written request by the person who owns or owned (or who is a prospective transferee of) the relevant pre-1990 offsetting forest land or the relevant pre-1990 forest land, provide a statement containing the information specified in subsection (3) to the person or prospective transferee (as the case may be).

186E Deforesting pre-1990 offsetting forest land before usual rotation period of forest species on pre-1990 forest land

(1) If the owner of pre-1990 offsetting forest land carries out an activity in Part 1A of Schedule 3 before the usual rotation period for forest species on the relevant pre-1990 forest land is completed, the owner must surrender units equivalent to the emissions for the relevant pre-1990 forest land.

(2) If subsection (1) applies, the EPA must remove the pre-1990 offsetting forest land from the register specified in section 186D(3).

186F Regulations relating to offsetting

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 usual rotation period for a forest species:
(b) prescribing any conditions that land that is subject to an offsetting forest land application must meet—
   (i) before the EPA may approve the application; and
   (ii) after the EPA has approved the application:
(c) prescribing the methodology for determining and calculating carbon equivalence:

(ea) prescribing time periods for re-using removed offsetting forest land or excess forest land:

(d) providing for any other matters contemplated by sections 186B and 186C—sections 186A to 186J, necessary for their administration, or necessary for giving them full effect.

186G EPA may revoke approval in certain circumstances

(1) The EPA may, in relation to a person specified in section 186A(2) or (3), revoke any approval it has given under section 186B if—

(a) the person fails to comply with section 186C; and

(b) the EPA has not noted on the register specified in section 186D(3) that the offsetting forest land is pre-1990 offsetting forest land.

(2) If the EPA revokes an approval, the provisions of this Act, other than section 179A(1)(b), apply to the relevant pre-1990 forest land as if the relevant offsetting forest application had not been made.

186H Treatment of allocations in respect of pre-1990 forest land that is offset

(1) This section applies to any owner of pre-1990 forest land—

(a) that was the subject of an offsetting forest land application approved under section 186B; and

(b) to which an allocation was made under an allocation plan, the pre-1990 forest land allocation plan (before or after the commencement of this section).

(2) If this section applies, the owner of the pre-1990 forest land must, within 30 working days of the date of notice given by the EPA,—

(a) open a holding account under section 18A that has been approved by the Registrar if the owner does not have one; and

(b) surrender or repay New Zealand units equivalent to the portion of New Zealand units that are allocated, as part of the second tranche, to the pre-1990 forest land that is offset by transferring them to a Crown holding account (whether or not the allocation was actually transferred when allocated).

(3) The notice referred to in subsection (2) must specify—

(a) the number of New Zealand units that must be repaid; and

(b) the Crown holding account to which the units must be transferred.

(4) If the owner of the pre-1990 forest land complies with subsection (2), but approval is revoked under section 186G or treated as revoked under section 186D(2)(a), the EPA must, in accordance with section 124, reimburse the
owner for any New Zealand units that the owner has surrendered or repaid under subsection (2).

(5) The EPA must, upon written request by a person who owns or owned (or is a prospective transferee of) pre-1990 forest land, provide a statement to the person or prospective transferee (as the case may be) about an allocation (if any) made under an allocation plan the pre-1990 forest land allocation plan.

(6) For the purposes of subsection (2), second tranche, in relation to an allocation, means the New Zealand units that are allocated under section 72(3)(a)(ii), (b)(ii), or (c)(ii) to a person under an allocation plan in respect of the pre-1990 forest land on or after 1 January 2013.

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.

Amendment note:
This section is proposed to be amended further on 30 November 2020 by clause 209 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

186I Participant in respect of pre-1990 offsetting forest land

If an activity listed in Part 1A of Schedule 3 is carried out, the landowner of the pre-1990 offsetting forest land is to be treated as the person carrying out the activity.

186J Methodology for pre-1990 offsetting forest land cleared after usual rotation period is completed

(1) Subsection (2) applies where the trees cleared from pre-1990 offsetting forest land by a person carrying out the activity in Part 1A of Schedule 3 after the usual rotation period is completed are 8 years or younger.

(2) If this subsection applies, the participant must,—

(a) for the purposes of sections 62(b) 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 offsetting 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 or 186F) cleared from the pre-1990 offsetting 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 1A of Schedule 3 prescribed in regulations under section 163 or 186F must relate to the
trees that are cleared from the pre-1990 offsetting forest land as part of the deforestation activity.

*Post-1989 forest land*

**Subpart 4—Post-1989 forest land (standard and permanent forestry)**

**186K 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 189BA 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 189AA.
- **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 relevant Part of Schedule 4 has been chosen to apply to the land.

**187 Conditions on registration as participant in respect of certain activities relating to post-1989 forest land 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 listed in Part 1 of Schedule 4 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 carrying out an activity listed in Part 1 of Schedule 4 in relation to exempt land that has been deforested 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 20 working days of submission of the emissions return under paragraph (a) 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 there is a person registered as a participant in respect of carrying out an activity listed in Part 1 of Schedule 4 in respect of any post-1989 forest land, no other person may be registered as a participant in respect of carrying out a different activity listed in Part 1 of Schedule 4 in respect of that land.

(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 carrying out an activity listed in Part 1 of Schedule 4 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 exist-
ing 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—

(i) has 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 carrying out an activity listed in Part 1 of Schedule 4—

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 the commencement of this section.

187A 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.

188 Registration as participant in respect of post-1989 forest land in standard or permanent forestry

(1) An application under section 57 to be registered as a participant in respect of an activity listed in Part 1 of Schedule 4—

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, for every person who is a participant in respect of an activity listed in Part 1 of Schedule 4, keep a record of—
(a) the carbon accounting area or areas in respect of which the person is a participant; and
(b) the unit balance of each carbon accounting area in respect of which the person is a participant, as calculated in accordance with section 190(2).

(3) A person who is a participant in respect of an activity listed in Part 1 of Schedule 4—
(a) may apply to the EPA to—
   (i) add or remove any carbon accounting area or areas to or 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—
   (i) the person ceases to carry out the activity in respect of a carbon accounting area or any land in a carbon accounting area in respect of which the person is recorded as a participant; or
   (ii) the post-1989 forest land in respect of which the person carries out the activity, or any part of the land in which the person carries out the activity, is affected by a natural event that permanently prevents re-establishing a forest on that land.

(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
the unit balance of each carbon accounting area in respect of which the
person is a participant, as calculated under the last emissions return sub-
mitted 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 or a notice 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 not add a carbon accounting area to the post-1989 forest land in
respect of which a person is recorded as a participant, unless satisfied that the
person would (if appropriate) qualify to be registered as a participant in respect
of that land under section 187.

(6) If the EPA—
(a) registers a person as a participant under section 57 in relation to an activ-
ity listed in Part 1 of Schedule 4, the EPA must notify under section
57(6)(b),—
(i) if section 187(1)(a) applies, any person with a registered forestry
right or registered lease in respect of the post-1989 forest land; or
(ii) if section 187(1)(b) applies, the landowner of the post-1989 forest
land; or
(b) receives an application to add a carbon accounting area and is satisfied
as to the matters specified in subsection (5), the EPA must—
(i) notify,—
(A) if the activity relates to owning post-1989 forest land, any
person with a registered forestry right or registered lease in
respect of the land in the carbon accounting area; or
(B) if the activity relates to being the holder of a registered for-
estry right or registered lease, or being a party to a Crown
conservation contract in respect of post-1989 forest land,
the landowner of the land in the carbon accounting area;
and
(ii) update the participant’s record to reflect the addition of the carbon
accounting area; and
(iii) notify the participant accordingly.

(7) If the EPA receives—
(a) an application under section 58 for the removal of a person’s name from
the register as a participant in relation to an activity listed in Part 1 of
Schedule 4, or is satisfied under section 59(2) that the person has ceased to carry out the activity, the EPA must—

(i) notify under section 58(3)(c) or 59(2)(b),—

(A) if the landowner is the participant, the holder of any registered forestry right or registered lease in respect of the post-1989 forest land; or

(B) if a holder of a registered forestry right or registered lease, or a party to a Crown conservation contract is the participant, the landowner of the post-1989 forest land; and

(ii) remove the person’s name from the register—

(A) 10 working days after the date of the notification under section 58(3)(c); or

(B) as required under section 59(2):

(b) an application to remove a carbon accounting area, or remove land from a carbon accounting area in respect of which a person is recorded as a participant, or a notification that the person has ceased to carry out the activity in respect of a carbon accounting area or part of a carbon accounting area, the EPA must—

(i) notify,—

(A) if the landowner is the participant, any holder of a registered forestry right or registered lease in respect of the post-1989 forest land; or

(B) if a holder of a registered forestry right or registered lease, or a party to a Crown conservation contract is the participant, the landowner of the post-1989 forest land; and

(ii) update the participant’s record to reflect,—

(A) if a carbon accounting area is removed or the person has ceased to carry out the activity in respect of all of the carbon accounting area, the removal of the carbon accounting area from the post-1989 forest land in respect of which the person is recorded as a participant; or

(B) if land has been removed from a carbon accounting area or the person has ceased to carry out the activity in respect of part of a carbon accounting area, a new carbon accounting area constituted from the remaining land and the unit balance of the new carbon accounting area determined in accordance with section 190(3)(b); and

(iii) notify the participant accordingly.

(7A) If the EPA is notified under subsection (3)(b)(ii), the EPA must, if satisfied that the post-1989 forest land is affected by a natural event that permanently pre-
vents re-establishing a forest on that land, comply with the requirements specified in subsection (7)(b)(i) to (iii).

(8) A change made to the participant’s record under subsection (6)(b)(ii) or (7)(b)(ii) has effect on and after the date of the relevant notice given under subsection (6)(b)(iii) or (7)(b)(iii), as the case may be.

(9) Subsection (10) applies if a person terminates a forest sink covenant registered under section 67ZD of the Forests Act 1949 and then registers as a participant in respect of the post-1989 forest land that was covered by the covenant.

(10) If this subsection applies,—

(a) despite section 57(8), the person registering as a participant is to be treated as being a participant in respect of the land formerly the subject of the covenant on and after the date the covenant was registered on the land under section 67ZD of the Forests Act 1949; and

(b) for the purposes of sections 189 to 194, any units transferred by or to the Crown in respect of the post-1989 forest land while it was the subject of the forest sink covenant must be treated as New Zealand units transferred for removals or surrendered for emissions from the land under this Act; and

(c) the post-1989 forest land formerly the subject of the covenant constitutes a single carbon accounting area in respect of which the person is registered as a participant for the purposes of subsection (2).

(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 187; 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); or

(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 188AC and 188AD (which require notice to the participant and notice to interested parties, if any).

188A Person ceases to be participant in respect of post-1989 forest land if natural event permanently prevents re-establishing forest on that land

If post-1989 forest land is affected by a natural event that permanently prevents re-establishing a forest on that land,—

(a) a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 ceases to be a participant in respect of the affected carbon accounting area or affected land in that carbon accounting area; and

(b) the person is to be treated as having ceased to carry out the activity listed in Part 1 of Schedule 4 when given notice by the EPA under section 188(7)(b)(iii).

189 Emissions returns for post-1989 forest land activities

(1) This section applies to a person who is a participant in respect of an activity listed in Part 1 of Schedule 4.

(2) A person to whom this section applies—

(a) must not submit an annual emissions return under section 65 or an emissions return under section 118 in relation to that activity; and

(b) may submit an emissions return in accordance with subsection (3) in relation to that activity; and

(c) must submit any emissions return required by subsection (4) or section 191 or 193 in respect of that activity; and

(d) may submit an emissions return in accordance with subsection (4A), if—

(i) the person is considering entering into a transaction described in section 192(1)(a) or (b); or

(ii) the expiry of an interest referred to in section 192(1)(c) is imminent; or

(iii) within 20 working days of applying under section 188(3)(a)(i) to remove a carbon accounting area from the land in respect of which the person is recorded as carrying out an activity listed in Part 1 of Schedule 4 or being removed from the register as a participant in respect of all the land in respect of an activity listed in Part 1 of Schedule 4, the person applies to—

(A) add a carbon accounting area or areas consisting of all the post-1989 forest land that was the subject of the application under section 188(3)(a)(i); or

(B) register as a participant under section 57 in relation to all the post-1989 forest land in respect of which the person had ceased to be registered as a participant.
A person to whom this section applies may, on 1 occasion, on or before 30 June in any year, submit an emissions return that—

(a) relates to the preceding year or years; and

(b) is in respect of any or all of the carbon accounting areas in respect of which the person is recorded as a participant; and

(c) for each carbon accounting area covered by the return, is in respect of the period—

(i) commencing on the later of—

(A) the first day of the mandatory emissions return period in which the return is submitted; or

(B) the date on which the land in the carbon accounting area became post-1989 forest land; or

(BA) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or

(C) the day after the end of the period covered by the last emissions return submitted for the carbon accounting area; and

(ii) ending on 31 December in the last year to which it relates.

A person to whom this section applies must, if registered as a participant on the last day of any mandatory emissions return period, within 6 months of the end of that period, submit an emissions return that—

(a) is in respect of each of the carbon accounting areas in respect of which the person was recorded as a participant on the last day of the mandatory emissions return period; and

(b) for each carbon accounting area covered by the return, is in respect of the period—

(i) commencing on the later of—

(A) the first day of the mandatory emissions return period that has just ended; or

(B) the date on which the land in the carbon accounting area became post-1989 forest land; or

(C) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or

(D) the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under
subsection (4A), if an emissions return has been submitted under that subsection in relation to the carbon accounting area during the mandatory emissions return period; and

(ii) ending on the last day of the mandatory emissions return period that has just ended.

(4A) A person to whom this section applies may, in the circumstances in subsection (2)(d), submit an emissions return in respect of any carbon accounting area to which a proposed transaction, or expiry of an interest, or an application under section 58, 59, or 188(3)(a)(i) relates that is in respect of the period—

(a) commencing on the latest of—

(i) the first day of the mandatory emissions return period in which the return is submitted; or

(ii) the date on which the land in the carbon accounting area became post-1989 forest land; or

(iii) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or

(iv) if an emissions return has already been submitted under this subsection in relation to the carbon accounting area during the mandatory emissions return period, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under this subsection; and

(b) ending on the date of submission of the emissions return.

(5) An emissions return submitted under subsection (3), (4), or (4A)—

(a) must, in respect of each carbon accounting area covered by the return,—

(i) record the activity in respect of which the person is recorded as a participant for the carbon accounting area; and

(ii) record the emissions and removals from the carbon accounting area during the emissions return period as calculated under section 62(b) and, if required, as verified under section 62(e); and

(iii) contain an assessment of the participant’s gross liability to surrender units for emissions or entitlement to receive New Zealand units for removals from the carbon accounting area that takes into account sections 188(10) and 190(1), but does not take into account any returns under subsection (3) that cover part of the same period as the emissions return; and

(iv) contain the information required by subsection (6), if relevant; and
(v) contain an assessment of the participant’s net liability to surrender units in respect of emissions or entitlement to receive New Zealand units for removals from the carbon accounting area during the emissions return period, taking into account sections 188(10) and 190(1) and subsections (6) and (7); and

(b) may contain an assessment of the participant’s net liability to surrender or repay units or net entitlement to receive New Zealand units in respect of all carbon accounting areas covered by the return, as referred to in subsection (8); and

(c) must be—

(i) accompanied by—

(A) the prescribed fee (if any); and

(B) any prescribed information; and

(ii) signed by the participant; and

(iii) submitted in the prescribed manner and format.

(6) If a person submits an emissions return under subsection (4) that covers a carbon accounting area in respect of a period for which a return has already been submitted under subsection (3), the return submitted under subsection (4) must—

(a) record the number of units transferred for removals or surrendered for emissions in respect of the carbon accounting area in respect of the return or returns submitted under subsection (3); and

(b) contain an assessment of the difference between—

(i) the net number of units transferred for removals or surrendered for emissions from the carbon accounting area in respect of the return or returns submitted under subsection (3) (which must be determined by subtracting the number of units surrendered for emissions from the carbon accounting area from the number of units transferred in respect of removals from the carbon accounting area); and

(ii) the gross number of units assessed as the participant’s liability to surrender or entitlement to receive in respect of the carbon accounting area under the return submitted under subsection (4) as recorded under subsection (5)(a)(iii).

(7) If the assessment referred to in subsection (6)(b) shows that the person would be—

(a) entitled to fewer units for removals from the carbon accounting area in respect of the return submitted under subsection (4) than the net units that have been transferred in respect of returns under subsection (3), the
person is liable to repay the number of units transferred in excess of the entitlement in the return under subsection (4); or

(b) entitled to receive more units for removals from the carbon accounting area in respect of the return submitted under subsection (4) than the net number of units that have been transferred in respect of returns under subsection (3), the person is entitled to receive the number of units that is the difference between the entitlement in respect of the return under subsection (4) and the net number of units already transferred in respect of returns under subsection (3); or

(c) liable to surrender more units for emissions from the carbon accounting area in respect of the return submitted under subsection (4) than the net number of units already surrendered in respect of returns under subsection (3), the person is liable to surrender the number of units that is the difference between the net number surrendered and the number assessed as being required to be surrendered under the return under subsection (4); or

(d) liable to surrender fewer units for emissions from the carbon accounting area in respect of the return submitted under subsection (4) than the net number of units already surrendered in respect of returns under subsection (3), the EPA must arrange for reimbursement to the person, in accordance with section 124, of the number of units that is the difference between the net number surrendered and the number assessed as being required to be surrendered under the return under subsection (4).

(7A) Subsections (6) and (7) apply to a return submitted under subsection (4A) as if it were a return submitted under subsection (4).

(8) A person who submits an emissions return under this section—

(a) may include in the return an assessment of the person’s net liability to surrender or repay units, or the person’s net entitlement to New Zealand units, calculated by determining the difference between the total number of units required to be surrendered for emissions from each of the carbon accounting areas covered by the return (or, if relevant, required to be repaid in respect of the carbon accounting areas covered by the return) and the total number of New Zealand units to which the person is entitled in respect of removals from each of the carbon accounting areas covered by the return (or, if relevant, is entitled to be reimbursed in respect of carbon accounting areas covered by the return); and

(b) may elect to surrender or repay the net number of units for which the person is liable, or to receive the net number of New Zealand units to which the person is entitled, as determined under paragraph (a); and

(c) must, if the person makes an election under paragraph (b), indicate clearly in the return that such an election has been made; and
must, if an assessment in the emissions return shows a liability or a net liability to—

(i) surrender units, surrender those units within 20 working days of submitting the emissions return; or

(ii) repay units, repay those units, by transferring the number of units required to be transferred, within 60 working days of submitting the emissions return, to a Crown holding account designated by the EPA, and the provisions of sections 134 and 135 apply, with any necessary modifications, as if—

(A) the units the person is required to repay were units transferred to the person in error; and

(B) the requirement to repay the units arose under section 125.

(8A) Despite subsection (8)(d), a person who submits an emissions return under this section that shows a liability or a net liability is under no obligation to surrender units if—

(a) the emissions return is in respect of post-1989 forest land; and

(b) that land is affected by a natural event that permanently prevents re-establishing a forest on that land.

(9) In this section,—

mandatory emissions return period means any of the following periods:

(a) the first commitment period;

(b) any subsequent commitment period or, if there is no subsequent commitment period,—

(i) the 5-year period commencing on 1 January 2013;

(ii) each subsequent 5-year period after the period specified in subparagraph (i)

units surrendered, in relation to an emissions return under subsection (3), include units that a person would have been required to surrender in respect of emissions covered by the return, but which were not actually surrendered because of an election under subsection (8)

units transferred for removals, in relation to an emissions return under subsection (3), include units that a person would have been entitled to receive for removals in respect of the return, but which were not actually transferred because of an election under subsection (8).

Special rules regarding surrender of units in relation to post-1989 forest land

(1) Despite section 63, a person who is or was a participant in respect of an activity listed in Part I of Schedule 4 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.

(2) The unit balance of a carbon accounting area must be calculated in accordance with the following formula:

\[ UB = (A - B) + OUB \]

where—

- \( UB \) is the unit balance of the carbon accounting area
- \( A \) is the net number of New Zealand units transferred for removals from the carbon accounting area since the date it was constituted (that is, the number of units transferred for removals less any units repaid under section 123(6) or 189(8))
- \( B \) is the net number of New Zealand units surrendered for emissions from the carbon accounting area since the date it was constituted (that is, the number of units surrendered, less any units reimbursed under section 124 or 189(7))
- \( OUB \) is,
  - (a) if the carbon accounting area is constituted from land from another carbon accounting area (following the removal of land from a carbon accounting area, or transmission of an interest as defined in section 192), the opening unit balance of the carbon accounting area, as determined in accordance with subsection (3); or
  - (b) if the carbon accounting area is not constituted as described in paragraph (a), but is constituted from land that was subject to a forest-sink covenant under section 67ZD of the Forests Act 1949, the net number of units transferred in respect of the land in the carbon accounting area while it was the subject of the forest sink covenant; or
  - (c) if the carbon accounting area is not constituted from land from another carbon accounting area or land that was subject to a forest sink covenant, zero.

(3) The following provisions apply if a person is required by this subpart to calculate the unit balance of a newly constituted carbon accounting area:

(a) if a carbon accounting area (CAA2) has been constituted under section 192(3)(b)(iii) from the land remaining in an affected carbon accounting area (CAA1) following transmission of an interest in part of the CAA1, the person must calculate the opening unit balance of CAA2 in accordance with subsection (4), and for the purposes of that calculation—
  - (i) \( H \) is the number of hectares of post-1989 forest land in CAA1;
(ii) \( H_p \) is the number of hectares of post-1989 forest land in CAA2; and

(iii) \( UB \) is the unit balance of CAA1 calculated in accordance with subsection (2) (and includes any units transferred or surrendered in respect of the removals or emissions reported in the emissions return submitted under section 193(1)); and

(iv) \( UB_p \) is the opening unit balance for CAA2 for the purposes of subsection (2):

(b) if a carbon accounting area (CAA2) has been constituted under section 188(7)(b)(ii)(B) from the land remaining in a carbon accounting area (CAA1) because the person has removed land from CAA1 or ceased carrying out an activity listed in Part 1 of Schedule 4 in respect of part of CAA1, the opening unit balance of CAA2 is the figure calculated under section 191(4) for UB, for the purposes of the person’s emissions return under section 191(3):

(c) if a carbon accounting area (CAA2) has been constituted by operation of section 192(3)(b)(ii), the person must calculate the opening unit balance of CAA2 by—

(i) calculating the unit balance of any whole carbon accounting areas that form part of CAA2 in accordance with subsection (2), including (but not limited to) any units transferred or surrendered in respect of the removals or emissions reported in the emissions return under section 193(1); and

(ii) calculating the unit balance of any part carbon accounting area that forms part of CAA2 in accordance with subsection (4), and for the purposes of that calculation—

(A) \( H \) is the number of hectares of post-1989 forest land in the carbon accounting area of which the part carbon accounting area formed a part before the transmission of the interest; and

(B) \( H_p \) is the number of hectares of post-1989 forest land in the part carbon accounting area; and

(C) \( UB \) is the unit balance of the carbon accounting area of which the part carbon accounting area formed a part before the transmission of the interest, including (but not limited to) any units transferred or surrendered in respect of the removals or emissions reported in the emissions return under section 193(1); and

(iii) adding together the unit balances obtained under subparagraphs (i) and (ii).
The unit balance of part of a carbon accounting area must be calculated in accordance with the following formula:

$$UB_p = UB / H \times Hp$$

where—

- $UB_p$ is the unit balance of the part of the carbon accounting area
- $UB$ is the unit balance of the carbon accounting area of which the part carbon accounting area formed a part, calculated in accordance with subsection (2)
- $H$ is the number of hectares in the carbon accounting area of which the part carbon accounting area formed a part
- $Hp$ is the number of hectares in the part of the carbon accounting area for which a unit balance is calculated.

For the purposes of this section,—

(a) units transferred for removals, surrendered, repaid, or reimbursed in respect of a carbon accounting area include units that a person would have been entitled to receive, or would have been required to surrender or repay, in respect of a carbon accounting area, but which were not actually transferred, surrendered, repaid, or reimbursed because of an election under section 189(8); and

(b) the date that a carbon accounting area is constituted is—

(i) the date the person’s registration as a participant in respect of the activity in the application took effect in accordance with section 57(8) for a carbon accounting area defined in an application referred to in section 188(1); and

(ii) the date the participant’s record is updated under section 188(6) or (7) for a carbon accounting area where land has been removed from a carbon accounting area, a person has ceased to carry out the activity on part of a carbon accounting area, or a person has applied to add a carbon accounting area under section 188(3)(a)(i); and

(iii) the date the carbon accounting area was constituted under that section for a carbon accounting area constituted by operation of section 192(3)(b); and

(c) hectare includes any fraction of a hectare.

191 Ceasing to be registered as participant in respect of post-1989 forest land

Subject to section 193, a person who is or was a participant in respect of an activity listed in Part 1 of Schedule 4—

(a) must submit an emissions return to the EPA within 20 working days of—
(i) being removed from the register in respect of that activity; or
(ii) removing a carbon accounting area or ceasing to be a participant in respect of a carbon accounting area in respect of which the person is recorded as a participant under section 188; or
(iii) removing land from a carbon accounting area or ceasing to carry out the activity in respect of part of a carbon accounting area in respect of which the person is recorded as a participant under section 188; and

(b) is, in respect of any carbon accounting area,—

(i) required to be covered by the return under subsection (2), liable to surrender the unit balance of the carbon accounting area; and

(ii) required to be covered by the return under subsection (3),—

(A) liable to surrender the unit balance relating to any land removed from the carbon accounting area or on which the person has ceased to carry out the activity, plus or minus any units that the person is required to surrender for emissions or entitled to receive for removals in respect of the land remaining in the carbon accounting area, as calculated under subsection (4); or

(B) entitled to receive the number of units assessed as the participant’s entitlement for removals from the land remaining in the carbon accounting area, less the unit balance relating to any land removed from the carbon accounting area or upon which the person has ceased to carry out the activity, calculated under subsection (4); and

(c) must, despite section 63, use only New Zealand units to surrender the unit balance that the person is liable to surrender under paragraph (b).

(1A) The purpose of subsection (1)(c) is to prevent reregistration arbitrage, which was an unintended consequence in the operation of the Act before the commencement of subsection (1)(c) and arose from significant differences between the price of New Zealand units and the price of certain Kyoto units.

(2) An emissions return submitted under this section—

(a) must,—

(i) if subsection (1)(a)(i) applies, be in respect of all the carbon accounting areas in respect of which the person is or was recorded as a participant in relation to that activity; or

(ii) if subsection (1)(a)(ii) applies, be in respect of the carbon accounting area or areas being removed in respect of which the person is ceasing to be a participant; and
must record the unit balance of each carbon accounting area required to be covered by the return under paragraph (a), calculated in accordance with section 190(2).

(3) An emissions return submitted under this section because subsection (1)(a)(iii) applies must—

(a) be in respect of each carbon accounting area from which land is removed or in respect of which the person is ceasing to carry out the activity on part of the land in the carbon accounting area; and

(b) for each carbon accounting area required to be covered by the return under paragraph (a), be for the period,—

(i) commencing on the latest of—

(A) the first day of the mandatory emissions return period (as defined in section 189(9)) in which the land was removed from the carbon accounting area (or the person ceased to carry out the activity on part of the land in the carbon accounting area); or

(B) the date on which the land in the carbon accounting area became post-1989 forest land; or

(C) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or

(D) if an emissions return has been submitted under section 189(4A) in relation to the carbon accounting area, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under that section; and

(ii) ending on the date the land is removed from the carbon accounting area or the person ceases to carry out the activity on part of the land in the carbon accounting area; and

(c) in respect of each carbon accounting area required to be covered by the return under paragraph (a),—

(i) comply with section 189(5)(a) and (6), as if any references in section 189(6) to subsection (4) of that section were references to this section; and

(ii) record the notional unit balance of the carbon accounting area, calculated by taking the unit balance of the carbon accounting area (as calculated under section 190(2)) before submission of the return under this section and, if the assessment recorded in the return under section 189(5)(a)(v) shows the person would be—
entitled to receive units in respect of removals from the carbon accounting area during the emissions return period, adding that number of units to the unit balance; or

(ii) liable to surrender units in respect of emissions from the carbon accounting area during the emissions return period, subtracting that number of units from the unit balance; and

(iii) record the person’s assessment of the person’s net liability to surrender units or entitlement to receive units in respect of the post-1989 forest land being removed from and the land remaining in the carbon accounting area calculated in accordance with subsection (4).

(4) Net liability to surrender units or entitlement to receive units in respect of a carbon accounting area required to be covered by the return under subsection (3)(a) must be calculated in accordance with the following formula:

\[ X = UB_{CAA} - UB_r \]

where:

- **X** is,—
  - if positive, the number of units the person must surrender in respect of the land being removed from the carbon accounting area or upon which the person has ceased to carry out the activity (as adjusted by any units required to be surrendered for emissions, or units to which the person is entitled for removals, from the land remaining in the carbon accounting area); or
  - if negative, the number of units to which the person is entitled in respect of removals from the land remaining in the carbon accounting area (as adjusted by any units required to be surrendered for the land being removed from the carbon accounting area or in respect of which the person has ceased to carry out the activity)

\( UB_{CAA} \) is the unit balance of the carbon accounting area before the removal of the land and submission of the return under this section, calculated in accordance with section 190(2)

\( UB_r \) is the unit balance of the land remaining in the carbon accounting area calculated as follows:

\[ UB_r = \frac{NUB_{CAA}}{H_{CAA}} \times H_r \]

where:

- **NUB_{CAA}** is the notional unit balance of the carbon accounting area calculated under subsection (3)(c)(ii)
H_{\text{CA}} is the number of hectares in the carbon accounting area before removal of the land or before the person ceased to carry out the activity in respect of part of the land

H_{r} is the number of hectares in the carbon accounting area, less the number of hectares being removed or in respect of which the person has ceased to carry out the activity.

(5) If a person submits an emissions return under subsection (3), section 189(7) applies to the person as if the references in that provision to subsection (4) were references to this section.

(6) Section 189(8) applies, with any necessary modifications, to a person who—
(a) submits an emissions return under this section; or
(b) submits an emissions return in respect of post-1989 forest land that is affected by a natural event that permanently prevents re-establishing a forest on that land because subsection (1)(a)(ii) or (iii) applies.

(7) An emissions return submitted under this section must be—
(a) submitted in the prescribed manner and format; and
(b) accompanied by any prescribed fee and any other prescribed information.

188AA Removing registration as participant in standard or permanent forestry

(1) This section sets out some situations in which section 191AA or 191BA applies (which relate to ceasing participation for whole or part carbon accounting areas).

(2) Section 191AA 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 191AA 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 59A (for persistent non-compliance), or in respect of an activity of standard forestry or permanent forestry under section 59B (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 191AA 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 an activity 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 191BA 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 an activity 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 194EB (which restricts the removal of land relating to permanent forestry).

188AB 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 of 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 191AA or 191BA is relevant applies (so that the person is not liable to surrender units equal to the unit balance of the affected land).

188AC 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.

188AD 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.
Provisional and final forestry emissions returns

189AA  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 189BA 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.

189AB  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 189BA 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 entitled to receive units under—
   (a) section 194FC(2), relating to carbon accounting areas (averaging); or
   (b) section 194PC(3), relating to temporary adverse event land.

189BA  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 189CA 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 189CB (which takes into account the liability or entitlement under each provisional forestry emissions return for an overlapping period, if any); and

(v) set out the calculation under section 189CC of the unit balance; and

(d) set out the calculation under section 189CD 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 188, 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

**189CA 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 (section 190)**

(2) However, 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 CAA1’s previous unit balance (meaning \( p \) in the calculation under section 189CC),—

then \( g \) is recalculated as the negative of the previous unit balance.

**189CB Net liability or entitlement for each CAA1 in final forestry emissions return**

(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)
\( g \) 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.

(3) However, if section 194DC applies, the person’s net liability or entitlement \((h)\) is recalculated as follows:

\[ h = h_a - s \]

where—

\( h_a \) 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 194DC.

**Definition**

(4) 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.

**189CC Unit balance calculation for each CAA1 in emissions return**

The unit balance \((u)\) 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.

**189CD 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 \((t)\) is calculated as follows:

\[ t = h_a \]

where—

\( h_a \) 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

189DA 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 New Zealand 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.

Amendment note:
This section is proposed to be amended further on 30 November 2020 by clause 210 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

New unit balance report for certain applications or notices

189EA 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 191BA), set out the calculation under this section of the person’s final liability or entitlement.
However, subsection (1) is subject to the following provisions (which limit reconfiguration):

(a) section 194FC(5) (carbon accounting areas (averaging));
(b) section 194HD (approved swap land);
(c) section 194PE (temporary adverse event land).

Opening unit balance if CAA2 has same boundaries as CAA1

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 CAA1s

If a CAA2 is formed from land in 1 or more CAA1s, 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):

\[ u_n \times \left( \frac{a_n}{b_n} \right) \]

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).

Opening unit balance if CAA2s include different land

If any of the land in the CAA2s that are replacing a CAA1 is land that was not in the CAA1, the **opening unit balance** of the any of the CAA2s (v) that are replacing the CAA1 is calculated as follows:

\[ v = u \times \left( \frac{a}{b} \right) \]

where—

u is the unit balance for the CAA1 in the emissions return

a is the area of that CAA2 (in hectares)

b is the total area of all of the CAA2s for the CAA1 (in hectares).

Final liability or entitlement if CAA1 forms notional CAA2 and remainder CAA2

A person’s **final liability or entitlement** (f) is calculated as follows:

\[ f = t - u_o \]
where—

\[ t \] is the person’s total liability or entitlement for the CAA1s (under the emissions return for the CAA1s 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**

### 190 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**

#### 191AA 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 on 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.

#### 191AB Effect of ceasing participation for whole carbon accounting areas

1. If section 191AA applies, then, starting on the end date,—

   a. the person ceases to be a participant in the activity on the CAA1s; and

   b. the person is liable to surrender the number of New Zealand 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 188AB (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management).
The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.

See sections 188AC and 188AD, which require notice to the participant and notice to interested parties, if any.

Amendment note:

This section is proposed to be amended further on 30 November 2020 by clause 211 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

191BA Ceasing participation for part carbon accounting areas

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 only part of 1 or more carbon accounting areas (each a CAA1).

To avoid doubt, this section applies whether—

(a) the person ceases to be a participant in the activity on 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.

However, this section does not apply to a situation for which another provision of this Act already requires an emissions return to be prepared.

The person must—

(a) prepare a final forestry emissions return under section 189BA 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 189EA 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.

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.
The land in a notional CAA2 must be treated as forest land if the person has ceased to be a participant because of section 188AB (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management).

### 191BB 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 191BA, 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 189DA); 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 New Zealand 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 on 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 (as long as only New Zealand units are surrendered for the liability in paragraph (c)).

3. However, subsection (2)(c) and (f) does not apply if the person has ceased to be a participant because of section 188AB (for a natural event that permanently prevents 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 188(2), to record the effects of this section.

5. See sections 188AC and 188AD, which require notice to the participant and notice to interested parties, if any.

**Amendment note:**

This section is proposed to be amended further on 30 November 2020 by clause 212 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.
191CA  If participant has never carried out activity in carbon accounting area

(1) This section applies if the EPA is satisfied that the person is not carrying out, and has never carried out, the activity of standard or permanent forestry on 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 on 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

192 Effect of transmission

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 listed in Part 1 of Schedule 4 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 listed in Part 1 of Schedule 4 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 listed in Part 1 of Schedule 4 of standard forestry or permanent forestry:

**Part A**

<table>
<thead>
<tr>
<th>Existing participant</th>
<th>Interest transferred</th>
<th>New participant</th>
<th>New activity in Part 1 of Schedule 4 of standard or permanent forestry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landowner of post-1989 forest land</td>
<td>Post-1989 forest land in respect of which the person is recorded as a participant</td>
<td>New land owner</td>
<td>Owning post-1989 forest land</td>
</tr>
<tr>
<td>Holder of a registered forestry right over post-1989 forest land</td>
<td>Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant</td>
<td>New forestry right holder</td>
<td>Holding a registered forestry right over post-1989 forest land</td>
</tr>
<tr>
<td>Leaseholder under a registered lease of post-1989 forest land</td>
<td>Registered lease over post-1989 forest land in respect of which the person is recorded as a participant</td>
<td>New lessee</td>
<td>Being the leaseholder under a registered lease of post-1989 forest land</td>
</tr>
<tr>
<td>Party to a Crown conservation contract</td>
<td>Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant</td>
<td>New party to the Crown conservation contract</td>
<td>Being a party to a Crown conservation contract</td>
</tr>
</tbody>
</table>

**Part B**

<table>
<thead>
<tr>
<th>Existing participant</th>
<th>Interest entered into</th>
<th>New participant</th>
<th>New activity in Part 1 of Schedule 4 of standard or permanent forestry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landowner of post-1989 forest land</td>
<td>Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant</td>
<td>Holder of a registered forestry right over post-1989 forest land (only if agreed under sub-section (1A))</td>
<td>Being the holder of a registered forestry right over post-1989 forest land (only if agreed under sub-section (1A))</td>
</tr>
<tr>
<td>Landowner of post-1989 forest land</td>
<td>Registered lease of post-1989 forest land in respect of</td>
<td>Lessee under a registered lease of post-1989 forest land (only if agreed)</td>
<td>Being a lessee under a registered lease of post-1989 forest land (only if agreed)</td>
</tr>
</tbody>
</table>
**Part B**

<table>
<thead>
<tr>
<th>Existing participant</th>
<th>Interest entered into which the person is recorded as a participant</th>
<th>New participant under subsection (1A)</th>
<th>New activity in Part 1 of Schedule 4 of standard or permanent forestry under subsection (1A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landowner of Crown land that is post-1989 forest land</td>
<td>Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant</td>
<td>Party to the Crown conservation contract</td>
<td>Being a party to a Crown conservation contract</td>
</tr>
</tbody>
</table>

**Part C**

<table>
<thead>
<tr>
<th>Existing participant</th>
<th>Interest expired or terminated</th>
<th>New participant</th>
<th>New activity in Part 1 of Schedule 4 of standard or permanent forestry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holder of a registered forestry right over post-1989 forest land</td>
<td>Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant</td>
<td>Landowner of the post-1989 forest land</td>
<td>Owning post-1989 forest land</td>
</tr>
<tr>
<td>Leaseholder under a registered lease of post-1989 forest land</td>
<td>Registered lease over post-1989 forest land in respect of which the person is recorded as a participant</td>
<td>Landowner of the post-1989 forest land</td>
<td>Owning post-1989 forest land</td>
</tr>
<tr>
<td>Party to a Crown conservation contract</td>
<td>Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant</td>
<td>Landowner of the post-1989 forest land</td>
<td>Owning post-1989 forest land</td>
</tr>
</tbody>
</table>

**(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.

(2) In subsections (1) and (3) to (7) and section 193,—

(a) **affected carbon accounting area** 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.

(3) If this section applies, then,—

(a) within 20 working days of the date of transmission of the transmitted interest,—

(i) the transferor and transferee must notify the EPA of the transmission; and

(ii) the transferor must submit an emissions return as required by section 193 in relation to any affected carbon accounting areas; and

(b) from the date of transmission,—

(i) the transferor ceases to be a participant under this Act in relation to the post-1989 forest land to which the transmitted interest relates and the transferee becomes a participant in respect of the activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in subsection (1) in relation to the post-1989 forest land to which the transmitted interest relates; and

(ii) the area of post-1989 forest land to which the transmitted interest relates constitutes a new carbon accounting area in respect of which the transferee is the participant; and

(iii) any post-1989 forest land remaining in an affected carbon accounting area and to which the transmitted interest does not relate constitutes a new carbon accounting area in respect of which the transferor is the participant.

(4) If this section applies because a transmitted interest has been transmitted by operation of law, then—

(a) the notice given under subsection (3)(a)(i) must be given as soon as practicable after the date of transmission; and

(b) the emissions return required under section 193 must be submitted as soon as possible after the date of the transmission.

(3) 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.

(4) The notice must—

(a) include a final forestry emissions return prepared by the transferor under section 189BA 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 189EA 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.

(5) A notice given under subsection (3)(a)(i) 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.

(6) Following receipt of a notice complying with subsection (5) and the emissions return required under section 193, the EPA must take such of the following actions as are relevant:

(a) if the transferee is not already registered under section 57, enter the transferee’s name on the register kept under section 57 as a participant in respect of an activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in subsection (1):

(b) if the transferee is already registered under section 57, but not in respect of the activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in subsection (1), amend that registration to show that the transferee is now a participant in respect of that activity:

(c) if the transferor is registered under section 57 only in respect of carrying out the activity listed in Part 1 of Schedule 4 in respect of post-1989 forest land to which the transmitted interest relates, remove the transferor’s name from the register in respect of that activity:

(d) update the EPA’s records under section 188(2) by—
   (i) removing the affected carbon accounting areas from the transferor’s record (if the transferor remains a participant only in respect of an activity listed in Part 1 of Schedule 4); and
   (ii) recording any new carbon accounting areas constituted by operation of subsection (3)(b)(ii) or (iii) on the transferor’s or transferee’s record; and
recording the opening unit balance of any carbon accounting area referred to in subparagraph (ii), calculated in accordance with section 190(3)(a) or (c);

(e) as applicable, give notice to the transferor and transforee of the action taken by the EPA under paragraphs (a) to (d).

(6) 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) to (5) do not apply (so that no notice, final forestry emissions return, or new unit balance report is required); but

(ii) section 193(2)(b) and (c) and (3) still applies; and

(b) for the transfer from the executor or administrator to a successor,—

(i) the transforee (not the transferor) must prepare the final forestry emissions return and new unit balance report required by subsection (4); and

(ii) for the purposes of those documents, the CAA1s are the CAA1s from the transfer to the executor or administrator.

(7) To avoid doubt,—

(a) for the purposes of section 54(4), a transferor continues to be liable in respect of any obligations that arose in relation to the carbon accounting area or part of the carbon accounting area 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 required under section 189); 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 188(6)(a) of the registration of the transforee under section 57 if that registration is in accordance with this section.

193 Emissions returns in relation to transmitted interests

(1) If section 192 applies, the transferor is not required to submit an emissions return under section 191 in respect of any post-1989 forest land to which the transmitted interest relates, but must submit an emissions return under this section by the date specified in section 192(3)(a) or 192(4)(b), as applicable.

(2) An emissions return under this section must—

(a) be in respect of all affected carbon accounting areas; and

(b) in respect of each carbon accounting area covered by the return, be for the period—

(i) commencing on the latest of—
(A) the first day of the mandatory emissions return period (as specified in section 189(9)) in which the interest was transmitted; or

(B) the date on which the land in the affected carbon accounting area became post-1989 forest land; or

(C) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(i)(B) or transmission of an interest under section 192(3)(b); or

(D) if an emissions return has been submitted under section 189(4A) in relation to the affected carbon accounting area, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under that section; and

(ii) ending on the date of transmission; and

(e) comply with section 189(5) and (6), as if the references in those provisions to subsection (4) were references to this section.

(3) If a person submits an emissions return under this section,—

(a) section 189(7) applies to the person as if the references in that provision to subsection (4) were references to this section; and

(b) section 189(8) applies to the person as if the reference in that provision to “this section” was a reference to section 193.

193 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 192, including a final forestry emissions return (for the CAA1s) and 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 189DA); 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 192(1); and

(c) the transferor,—

(i) if there is 1 or more transferor CAA2s, is a participant in the relevant activity described in section 192(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 188(2), to record the effects of this section.

**Information about status of forest land**

194 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.

(c) [Repealed]

(3) [Repealed]

**Non-compliance for transmitted interests**

194AA EPA may act if persons fail to give notice of transmitted interest

(1) Sections 128A and 128B apply to a person’s failure to give notice in accordance with section 192 (the notice provision)—

(a) as if sections 128A and 128B referred to the transferor and transferee (as applicable) instead of a participant; and

(b) with the modifications set out in this section.

(2) The deadline that the EPA must give the transferor and transferee under section 128A(5) to give or correct the required notice is—
(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 paragraph (a), the end of the 90th working day after the EPA gives its notice.

(3) If the transferor and transferee do not give or correct the required notice by that deadline, the EPA may either—
(a) take action under section 128A; or
(b) amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record that—
   (i) the transferee ceased to be a participant in the relevant activity on each transferee CAA2 immediately after becoming a participant for those; and
   (ii) if there are 1 or more transferor CAA2s, the transferor ceased to be a participant in the relevant activity on the transferor CAA2s immediately after becoming a participant for those.

(4) If the EPA acts under subsection (3)(b),—
(a) the transferee is liable to surrender the number of New Zealand units equal to the unit balance of each transferee CAA2 (calculated under the last emissions return submitted for the CAA2); and
(b) if there are 1 or more transferor CAA2s, the transferor is liable to surrender the number of New Zealand units equal to the unit balance of each transferor CAA2 (calculated under the last emissions return submitted for the CAA2); and
(c) see sections 188AC and 188AD, which require notice to the participant and notice to interested parties, if any.

(5) If the transferee or transferor submits an emissions return that assesses their entitlement to receive (or be reimbursed) units in respect of a transferee CAA2 or transferor CAA2 (as applicable), for any period starting on or after the date of transmission, the entitlement takes effect only when (if ever)—
(a) the transferor and transferee give or correct the required notice; or
(b) the EPA takes action under section 128A that has the same effect as the required notice.

Amendment note:
This section is proposed to be amended further on 30 November 2020 by clause 213 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.
Application to reconfigure carbon accounting areas for standard or permanent forestry

194CA 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 189BA 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 189EA 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 194FC(5) (carbon accounting areas (averaging));
   (b) section 194HD (approved swap land);
   (c) section 194PE (temporary adverse event land).

194CB Criteria to reconfigure carbon accounting areas for standard or permanent forestry

(1) If a person submits an application under section 194CA (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.
The criteria are—

(a) that the application complies with section 194CA; 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)(na) are met.

In considering the application, the EPA must treat the land to which it relates as post-1989 forest land.

194CC 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 194CA (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 189DA); 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 188(2), to record the effects of this section.

194CD 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 194CA.

(2) For the purposes of section 194EA, 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

194DA 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 final activity on any of the land (to carry over the unit balances of carbon accounting areas from the initial activity to the final activity).
Change from standard or permanent forestry

(2) 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 189BA 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 or entitlement required to be included by section 194DF(4) or 194DG(4); and

(d) include in that return a new unit balance report prepared under section 189EA 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; or

(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

(3) If the initial activity is PFSI activity, the application must—

(a) specify the initial activity and the final activity; 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 194DD for the initial activity that covers the PFSI land; and

(d) include in that return a new unit balance report prepared under section 194DE for the final activity that covers the following 1 or 2 carbon accounting areas (each a CAA2):

(i) a CAA2 that has the same boundaries as the PFSI land, if subparagraph (ii) does not apply; or

(ii) if the clear-fell exception applies and any of the PFSI land was clear-felled after the forest sink covenant was terminated,—
(A) a CAA2 for all of the PFSI land that was clear-felled; and
(B) a CAA2 for the rest of the PFSI land.

**General provisions**

(4) 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).

(5) The following table specifies the matters referred to in this section (under the relevant headings):

<table>
<thead>
<tr>
<th>Previous activity</th>
<th>Initial activity</th>
<th>Final activity</th>
<th>Clear-fell exception</th>
</tr>
</thead>
<tbody>
<tr>
<td>PFSI activity</td>
<td>PFSI activity</td>
<td>Standard forestry</td>
<td>Exception applies</td>
</tr>
<tr>
<td>PFSI activity</td>
<td>Permanent forestry</td>
<td>Permanent forestry</td>
<td></td>
</tr>
<tr>
<td>Standard forestry</td>
<td>Standard forestry</td>
<td>Permanent forestry</td>
<td></td>
</tr>
<tr>
<td>PFSI activity</td>
<td>Permanent forestry</td>
<td>Permanent forestry</td>
<td>Exception applies</td>
</tr>
<tr>
<td>Permanent forestry</td>
<td>Permanent forestry</td>
<td>Standard forestry</td>
<td></td>
</tr>
</tbody>
</table>

(6) As indicated in the table, **the clear-fell exception applies to**—
   (a) a change from PFSI activity (initial activity) to permanent forestry (final activity); and
   (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.

**194DB Criteria to change activity on post-1989 forest land**

(1) If a person submits an application under section 194DA (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 194DA; 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 187; and
   (d) that any other criteria prescribed in regulations made under section 168(1)(na) are met.
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.

194DC 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 194DA (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 189DA); 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) the person becomes a participant in the final activity on the CAA2s; and

(c) 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 188(2), to record the effects of this section.

194DD 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 person’s liability or entitlement for emissions and removals from the PFSI land while the forest sink covenant was registered against it.
(2) A person’s liability or entitlement for the PFSI land (g) is calculated as follows:

\[ g = r - e \]

where—

- \( r \) is the number of units 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 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).

194DE New unit balance report for application to change from PFSI activity

(1) A new unit balance report prepared under this section must—

(a) specify the CAA2 that the report covers, or specify and define both CAA2s that the report covers; and
(b) specify the PFSI land (which will form the CAA2 or CAA2s); and
(c) set out the calculation under this section of the opening unit balance of the CAA2 or each CAA2.

(2) If there is only 1 CAA2 (formed from all the PFSI land), the opening unit balance of the CAA2 (v) is calculated as the person’s liability or entitlement for the PFSI land (under the emissions return for the PFSI land that includes the report).

(3) If there are 2 CAA2s, the opening unit balance of a CAA2 (v) is calculated as follows:

\[ v = g \times (a \div b) \]

where—

- \( g \) is the person’s liability or entitlement for the PFSI land (under the emissions return for the PFSI land that includes the report).
- \( a \) is the area of overlap between the CAA2 and the PFSI land (in hectares).
- \( b \) is the area of the PFSI land (in hectares).
194DF 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 194DA; 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 accepts the application, the person is liable to surrender the number of New Zealand 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 CAA2 is constituted (in tonnes per hectare)
- \(a\) is the area (in hectares) of area A.

(3) If 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 under subsection (2)—
   (a) is to be treated as a liability for emissions for the CAA1 that includes area A during the emissions return period for the emissions return under section 194DA(2)(c); and
   (b) must be included in that emissions return as part of the calculation under section 189CA of the person’s gross liability or entitlement required by section 189BA(1)(c)(iii).

(5) In this section, terms defined in section 194FA have the meanings given in that section.

Amendment note: This section is proposed to be amended further on 30 November 2020 by clause 214 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

194DG 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 194DA; 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 accepts the application, the person is liable to surrender the number of New Zealand 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 a 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 under subsection (2)—

(a) is to be treated as a liability for emissions for CAA1 during the emissions return period for the emissions return under section 194DA(2)(c); and

(b) must be included in that emissions return as part of the calculation under section 189CA of the person’s gross liability or entitlement required by section 189BA(1)(c)(iii).

(5) In this section, terms defined in section 194FA have the meanings given in that section.

Amendment note:

This section is proposed to be amended further on 30 November 2020 by clause 215 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

Restrictions for permanent forestry land

194EA 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 194EK(1)(a).

(2) The restriction start date for the land is specified by 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 194DA 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 194DA to change from the initial activity; and
   (ii) the person previously became registered for the initial activity by acceptance of an application under section 194DA 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 194DA 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 194CD (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 188AB (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 192; or
other land is removed in accordance with section 194EC (an exception requiring the Minister’s approval); or

any of the land in the carbon accounting area becomes temporary adverse event land under section 194NC;

(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:

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
<th>Column 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous activity</td>
<td>Initial activity</td>
<td>Final activity</td>
<td>Restriction start date</td>
<td>Later restriction start date (for clear-felled land)</td>
</tr>
<tr>
<td>Permanent forestry</td>
<td>Permanent forestry</td>
<td>Registration date</td>
<td>Covenant date</td>
<td>Registration date</td>
</tr>
<tr>
<td>PFSI activity</td>
<td>Permanent forestry</td>
<td>Registration date</td>
<td>Registration date</td>
<td></td>
</tr>
<tr>
<td>Standard forestry</td>
<td>Permanent forestry</td>
<td>Registration date</td>
<td>Registration date</td>
<td></td>
</tr>
<tr>
<td>PFSI activity</td>
<td>Standard forestry</td>
<td>Permanent forestry</td>
<td>Covenant date</td>
<td>Registration date</td>
</tr>
</tbody>
</table>

**194EB **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) a person ceases to be a participant because of—

(i) section 188AB (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or

(ii) section 194QC(2)(e) (for temporary adverse event land that becomes permanently affected land);

(c) the land becomes land for which a transferee under section 192 is instead registered as carrying out permanent forestry (if there is a transmitted interest);

(d) the registration is removed in accordance with section 194EC (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 194EH (after land is deforested);

(f) after the permanent forestry period ends,—
the EPA removes the registration under section 194EL (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 194DA.

(2) This section overrides any other provision of this Act.

194EC 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 188AA(4)(a)(i) or (ii) and comply with sections 191AA and 191AB or sections 191BA and 191BB (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.

194ED Exception from prohibition on clear-felling and deforestation

(1) Sections 194EE to 194EI do not apply to—

(a) land for which a person ceases to be a participant because of—

(i) section 188AB (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or
(ii) section 194QC(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 194SC applies, sections 194EE to 194EI 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 194NA(3)(d)(i).

194EE 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 194EF (pecuniary penalty for clear-felling) when required by that section.

194EF 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 194EE(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 194EE(1) unless the EPA is satisfied that the defence applies.

(3) The court—

(a) must determine whether the person has contravened section 194EE(1); and

(b) must determine whether 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—
must be the deemed value of the forest that was on the clear-felled land, as determined by regulations; but

may be reduced, at the court’s discretion, if the court is satisfied that the person has a reasonable excuse for the contravention.

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.

194EG 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 194EF:

(a) specifying the deemed value of the forest that was on clear-felled land;

(b) specifying different deemed values based on different factors, 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 194EF, necessary for its administration, or necessary for giving it full effect.

(2) Before recommending the making of regulations under this section, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by the regulations.

(3) The process for consultation must include—

(a) adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and

(b) a reasonable opportunity for interested persons to consider the recommendation and make submissions; and

(c) adequate and appropriate consideration of submissions.

(4) Before recommending the making of regulations under this section, the Minister must also consider—

(a) the differences in value between forests of different types or ages or with trees of different forest species or sizes; and
(b) the market value of the wood and other products removed from forests, and the historic variation in the market value; and
(c) 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
(d) any need to deem the volume of the harvest from a forest.

(5) Regulations made under this section come into force 3 months after the date of their notification in the Gazette or any later date specified in the regulations.

(6) A failure to comply with this section does not affect the validity of regulations made under it.

194EH 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 188AA(4)(b) that they have ceased to carry out the activity on the CAA1s; and
      (ii) sections 191AA and 191AB apply in respect of the CAA1s; and
   (c) the EPA must apply section 194EI (pecuniary penalty for deforestation).

194EI 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 194EH(1) unless the EPA is satisfied that the defence applies.

(2) The court—
   (a) must determine whether the person has contravened section 194EH(1); and
   (b) must determine whether 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 set by or in accordance with regulations made under section 30W.

(4) However, the court may reduce the amount, at its discretion, but only 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.

194EJ 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 194EF or 194EI.

(2) The court must also order that the penalty must 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.

194EK 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; or
(b) a final forestry emissions return under section 189AB 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.

194EL 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 194EK(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 New Zealand 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 188(2), to record the effects of this section.

Amendment note:
This section is proposed to be amended further on 30 November 2020 by clause 216 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

Subpart 5—Averaging accounting methodology

General provisions

194FA Interpretation for subpart 5
In this subpart,—

approved swap land means land that—
   (a) has become approved swap land under section 194GC(2)(f) or 194KE(2)(c); and
   (b) has not ceased to be approved swap land under a provision referred to in section 194HA

average carbon equality, in relation to land in a carbon accounting area (averaging), means that the determined carbon stock of the land is equal to the nominal average carbon stock for the land

carbon accounting area (averaging) has the meaning given by section 194FC(3)
determined carbon stock, for land in a carbon accounting area (averaging), means the carbon stock of the land determined in accordance with regulations made under section 194LA

excess forest land has the meaning given in section 194JB

expected carbon stock, for remainder land, has the meaning given in section 194JA

first rotation forest has the meaning given by section 194FD(1) and (2)

nominal average carbon stock, for land in a carbon accounting area (averaging), means the expected long-term average level of carbon stock of the land over multiple forest rotations determined in accordance with regulations made under section 194LA

non-forest land has the meaning given in section 194JB

qualifying forest land has the meaning given in section 194JB(3)

reference carbon stock, for a CAA1, has the meaning given in section 194GA(2)(e)

release criteria has the meaning given in section 194JA

release date, for approved swap land, has the meaning given in section 194GC(2)(g)

remainder land has the meaning given in section 194JB

subsequent rotation forest has the meaning given by section 194FD(4)

swap application date means the date on which an application for a carbon equivalent forest land swap was submitted to the EPA under section 194GA.

194FB 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, is determined by reference to the expected long-term average carbon stock of the land over multiple forest rotations and changes in that average.

(3) In general terms, the participant—

(a) is entitled to receive New Zealand units for removals—
(i) for land that has a first rotation forest, if—
   (A) it has not reached average carbon equality; or
   (B) after it reaches average carbon equality, its nominal average carbon stock increases;
(ii) for land that has a subsequent rotation forest, if its nominal average carbon stock increases; and
(b) is liable to surrender units for emissions—
   (i) for land that has first rotation forest and has reached average carbon equality, if its nominal average carbon stock decreases; or
   (ii) for land that has subsequent rotation forest, if its nominal average carbon stock decreases; or
   (iii) in any case, if the land is deforested.

194FC 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 on a carbon accounting area (averaging).

(2) The participant in respect of a carbon accounting area (averaging)—
   (a) is entitled to receive New Zealand units, and liable to surrender New Zealand units, for the emissions and removals from the activity in accordance with regulations made under section 194LA; and
   (b) if provided in the regulations, is not required to—
      (i) calculate emissions and removal for which they are not liable to surrender, or entitled to receive, units; or
      (ii) submit emissions returns covering a carbon accounting area (averaging) in relation to which they are not liable to surrender, or entitled to receive, units.

(3) 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 2020; and
   (b) it was constituted—
      (i) under section 188 from land that was not part of a previous carbon accounting area; or
      (ii) under section 194DC 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).
See also clause 26 of Schedule 1AA, which allows some other carbon accounting areas to be converted into carbon accounting areas (averaging).

**Limit on reconfiguration**

Carbon accounting areas cannot be reconfigured (whether by application under section 194CA 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.

**Amendment note:**

This section is proposed to be amended further on 30 November 2020 by clause 217 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

---

**194FD First rotation forest and subsequent rotation forest**

(1) Land in a carbon accounting area (averaging) 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 194LA (but see subsection (4)); 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 194LA to have a first rotation forest.

(2) However, land that would otherwise have a first rotation forest under subsection (1) does not have a first rotation forest if it is declared by regulations made under section 194LA to have a subsequent rotation forest.

(3) Subsection (1)(b)(ii) does not apply if the deforestation referred to in subsection (1)(b)(i) occurred before the commencement of this section.

(4) Land in a carbon accounting area (averaging) has a **subsequent rotation forest** if it does not have a first rotation forest.
Carbon equivalent forest land swaps: applications

194GA Application for carbon equivalent forest land swap

(1) A participant in an activity of standard forestry on 1 or more carbon accounting areas (averaging) may apply to the EPA to swap 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 swapped for each CAA1; and

(c) include a final forestry emissions return prepared under section 189BA 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 189EA 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 swap application date determined in accordance with regulations made under section 194LA (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 194LA.

(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).
194GB Criteria for carbon equivalent forest land swap

(1) If a person submits an application under section 194GA for a carbon equivalent forest land swap, 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—

CAA1 criteria

(a) the land in each CAA1 is 1 or both of the following:

(i) land that has a first rotation forest and has reached average carbon equality:

(ii) land that has a subsequent rotation forest; and

(b) the 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 swap application date, but if it were to become forest land—

(A) would be post-1989 forest land; and

(B) would meet the criteria in section 194FD for having a first rotation forest;

(ii) post-1989 forest land that—

(A) became post-1989 forest land less than 2 years before the swap application date; and

(B) meets the criteria in section 194FD for having a first rotation forest;

(iii) offsetting forest land under an approved offsetting forest land application that was removed as offsetting forest land under section 186CA within the period prescribed in regulations made under section 194LA;

(iv) land that was approved swap land but became excess forest land and ceased to be approved swap land under section 194JF(2)(e) within the period prescribed in regulations made under section 194LA; 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 is 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 187 to be registered as a participant in respect of the CAA2; and

Release criteria

(g) the EPA is satisfied that, on the release date, the 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 194LA are met.

194GC Effect of approval of application to swap land

(1) This section applies if the EPA approves an application under section 194GA for a carbon equivalent forest land swap.

(2) Starting on the swap 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 189DA); 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 is liable to surrender the number of New Zealand units equal to the unit balance of that carbon accounting area; and

(c) the persons proposed as participants for CAA2s are participants in the activity on the CAA2s; and

(d) the participant in respect of the CAA1s—

(i) ceases to be a participant in the activity on 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 approved swap land for that CAA1; and

(g) the release date for the approved swap land for a CAA1 is—
(i) if, on the swap 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 swap application date; or

(ii) if not, 4 years after the start of the last time the CAA1 was cleared before the swap application date.

(3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.

**Amendment note:**
This section is proposed to be amended further on 30 November 2020 by clause 218 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

---

**Carbon equivalent forest land swaps: approved swap land**

### 194HA Duration of approved swap land status

(1) Land that becomes approved swap land for a CAA1 under section 194GC(2)(f) remains approved swap land until one of the following occurs:

(a) the land meets the release criteria and is released from being approved swap land on the release date under section 194JF(2)(c):

(b) the person ceases to be a participant because of section 188AB (for a natural event that permanently prevents re-establishing a forest):

(c) the land becomes temporary adverse event land under section 194NC:

(d) the land is non-forest land and ceases to be approved swap land under section 194JF(2)(d):

(e) the land is excess forest land and ceases to be approved swap land under section 194JF(2)(e):

(f) the land is removed land and ceases to be approved swap land under section 194KE(2)(d).

(2) To avoid doubt, the land continues to be approved swap land even if the carbon accounting areas containing the land are reconfigured (whether under section 194CC or by any other process that requires the submission of a new unit balance report).

### 194HB Effect of being approved swap 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 approved swap land as if it were post-1989 forest land, subject to sections 194HC and 194HD.
194HC Subsequent rotation forest

(1) Approved swap land is to be treated as having a subsequent rotation forest (despite section 194FD(1)).

(2) Subsection (1) continues to apply to remainder land until—

(a) it is first cleared after the release date (even though it ceases to be approved swap land on the release 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 194FD applies.

194HD Reconfiguration restrictions

(1) A carbon accounting area containing approved swap land cannot be reconfigured (whether by application under section 194CA 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 approved swap 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 188AB and 191BA;

(c) to remove land that becomes temporary adverse event land under section 194NC;

(d) on the release date as required under section 194JB;

(e) to substitute land under sections 194KC to 194KE.

194HE No transfers to permanent forestry

A participant for a carbon accounting area containing approved swap land cannot apply under section 194DA to become a participant in an activity of permanent forestry on that land.

Carbon equivalent forest land swaps: release of approved swap land

194JA Release criteria

(1) The release criteria in respect of a CAA1 and its approved swap land that is remainder land are that, on the release date,—

(a) the area of the remainder land is equal to or greater than the area of CAA1; and

(b) the expected carbon stock of the remainder 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 194LA are met.

(2) The expected carbon stock of land is the carbon stock that the land is expected to have achieved at the end of the period prescribed in regulations made under section 194LA, determined in accordance with the regulations made under section 194LA.

Adjustment if adverse event

(3) If any of the approved swap land ceases to be approved swap land under section 194HA(1)(b) or (c) (because of adverse events) on or before the release date,—

(a) for subsection (1)(a), the area of the CAA1 on the swap 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:

\[ y = a \times \left( \frac{j}{k} \right) \]

where—

- \( a \) is the area of the CAA1 on the swap application date (in hectares)
- \( j \) is the area of the land that ceased to be approved swap land under section 194HA(1)(b) or (c) (in hectares)
- \( k \) is the area of the approved swap land when the land swap was approved (being all of the CAA2s under section 194GA) (in hectares).

(5) The reduced reference carbon stock for the CAA1 (in tonnes) \( (w) \) is calculated as follows:

\[ w = c \times \left( \frac{j}{k} \right) \]

where—

- \( c \) is the reference carbon stock for the CAA1 (in tonnes)
- \( j \) is the area of the land that ceased to be approved swap land under section 194HA(1)(b) or (c) (in hectares)
- \( k \) is the area of the approved swap land when the land swap was approved (being all of the CAA2s under section 194GA) (in hectares).

194JB Notice of compliance with release criteria

(1) The participants in an activity of standard forestry on the approved swap land for a CAA1 on the release date must give notice to the EPA of the extent of compliance with the release criteria on the release date.

(2) The notice must—

(a) identify all of the approved swap land that is each of the following:
(i) **remainder land**, being all the approved swap land that is qualifying forest land on the release date, other than excess forest land;

(ii) **non-forest land**, being all the approved swap land that is not qualifying forest land on the release date;

(iii) **excess forest land**, being any approved swap land that—

   (A) is qualifying forest land on the release date; and

   (B) does not need to be part of the remainder land in order for the release criteria to be met; and

   (C) the participants want to be excluded from the remainder land; and

(b) include final forestry emissions returns under section 189BA for each participant and activity—

   (i) that covers each carbon accounting area that contains the approved swap land (each a **CAA3**); and

   (ii) that uses the release date as the relevant date; and

(c) include in that return a release date unit balance report under section 194JE that covers the following carbon accounting areas (each a **CAA4**) formed from each CAA3:

   (i) 1 or more **remainder CAA4s** for the remainder land in the CAA3;

   (ii) a **non-forest CAA4** for any non-forest land in the CAA3;

   (iii) 1 or more **excess CAA4s** for any excess forest land in the CAA3; and

(d) include any information prescribed in regulations under section 194LA.

(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 of the forest land is 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 194KA(2).

(4) **The notice** must—

   (a) be made jointly by the participants in respect of all of the approved swap land for the CAA1; and

   (b) be signed by all of the applicants; and

   (c) be given within 60 working days after the release 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 189BA to 189DA 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.

194JC Liability to surrender units if release criteria not met

(1) This section applies in relation to the CAA3s for a CAA1 if the release criteria under either or both of paragraphs (a) and (b) of section 194JA(1) are not met.

(2) The participants for the CAA3 are liable to surrender the number of New Zealand units determined under subsections (4) to (6).

(3) That liability is apportioned between the CAA3s under section 194JD.

Liability for area insufficiency

(4) If section 194JA(1)(a) is not met, the number of units to be surrendered \( s_a \) is calculated as follows:

\[
s_a = \left( \frac{c - d}{c} \right) \times u
\]

where—
\( c \) is the area of CAA1 on the swap application date (reduced under section 194JA(3) if applicable) (in hectares)
\( d \) is the total area of all of the remainder land for the CAA1 (in hectares)
\( u \) is the unit balance of the CAA1 in the emissions return that accompanied the application under section 194GA.

Liability for carbon insufficiency

(5) If section 194JA(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 194JA(3) if applicable) (in tonnes)
\( f \) is the total expected carbon stock of all of the remainder land for the CAA1 (in tonnes).

Total liability

(6) The total liability under this section \( t \) is calculated as follows:

\[
t = s_a + s_c
\]
194JD Maximum liability and apportionment

(1) This section applies if the participants for the CAA3s for a CAA1 have a liability under section 194JC.

One CAA3

(2) If there is only one CAA3,—

(a) section 190 applies; and

(b) the liability for that CAA3 is equal to that under section 194JC(6).

Two or more CAA3s: maximum liability

(3) If there are 2 or more CAA3s,—

(a) section 190 does not apply; but

(b) if the total liability calculated under section 194JC(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:

$$k = t \times \left( \frac{a_3}{b_3} \right)$$

where—

$t$ is the total liability under section 194JC(6), reduced under subsection (3) if applicable

$a_3$ is the area of the CAA3 (in hectares)

$b_3$ is the total area of all of the CAA3s (in hectares).

194JE Release date unit balance report

(1) A release date unit balance report required by section 194JB(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 non-forest 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 remainder CAA4.

(2) The opening unit balance of a remainder CAA4 ($v$) is calculated as follows:
\[ v = (u - k) \times (a_4 - b_4) \]

where—

- \( u \) is the unit balance of the CAA3 in the emissions return under section 194JB(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 194JD
- \( a_4 \) is the area of the remainder CAA4 (in hectares)
- \( b_4 \) is the total area of all of the remainder land for the CAA1 (in hectares).

### 194JF Effect on release date

1. This section applies if notice is given to the EPA in accordance with section 194JB, including a final forestry emissions return (for the CAA3s) and release date unit balance report (for the CAA4s).

2. Starting on the release 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 189DA); 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 194JC); and
   - (c) for each remainder 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 remainder CAA4 (instead of the CAA3); and
     - (ii) the land in the remainder CAA4 is released from being approved swap land; and
     - (iii) the unit balance of each remainder CAA4 is the opening unit balance calculated for it in the release date unit balance report; and
   - (d) for each non-forest 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 non-forest CAA4; and
     - (ii) the land in the non-forest CAA4 ceases to be approved swap land; and
     - (iii) the unit balance of each non-forest 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 approved swap land; and
(iii) the unit balance of each non-forest CAA4 is zero.

(3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.

(4) After the release date, section 179(1) (except section 179(1)(a)) applies to the remainder land as if it had been cleared on the swap application date.

(5) Subsection (4) ceases to apply when that land is next cleared (after which section 179 will apply).

**Carbon equivalent forest land swaps: action if original criteria not met**

194KA EPA may take action if original criteria not met

(1) This section applies if the EPA—
   (a) approved an application for a carbon equivalent forest land swap; but
   (b) is now satisfied that the application should not have been approved because any of the approved swap land did not meet the criteria in section 194GB(2)(c) or (e) or any applicable criteria prescribed for section 194GB(2)(h).

Action on or before release date

(2) If this section applies to land on or before the release date, the EPA may declare the land that did not meet the criteria not to be qualifying forest land for the purposes of section 194JB.

Action after release date

(3) If this section applies to land after the release date, the EPA may declare the whole of the carbon accounting area that now contains the land that did not meet the criteria to not be approved swap land.

Procedure

(4) The EPA cannot make a declaration under this section more than 7 years after the swap 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 them at least 60 working days to—
      (i) show cause why the EPA should not do so; or
      (ii) take other remedial action specified in the notice.
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 194KB; and
(c) the participant’s right under section 144 to seek a review of the decision to make the declaration.

194KB Effect of declaration after release date
(1) This section applies if the EPA makes a declaration under section 194KA(3) that a carbon accounting area is not approved swap land (the CAA).

(2) Starting on the date on which the declaration is made,—
(a) the land ceases to be approved swap land; and
(b) the person ceases to be a participant in the activity on the CAA; and
(c) the person is liable to surrender the number of New Zealand units equal to the unit balance of the CAA.

(3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.

Amendment note:
This section is proposed to be amended further on 30 November 2020 by clause 220 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

194KC Remedial action: land substitution
(1) In a notice under section 194KA(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
include a final forestry emissions return prepared under section 189BA 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 189EA(5); and

(iv) is otherwise prepared under section 189EA; and

(f) include any information prescribed in the regulations under section 194LA.

(4) The notice must—

(a) be signed by the participant; and

(b) be given within the period specified in the notice under section 194KA(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 189BA to 189EA 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.

194KD Criteria for land substitution

(1) If a person submits an application under section 194KC 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 subparagaphs (i) to (iv) of section 194GB(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 release date, the release criteria are likely to be met in respect of the CAA1 and the new approved swap land; or
   (ii) if the substitution date is on or after the release date, the expected carbon stock of the new approved swap 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 194LA are met.

(3) In this section,—

new approved swap land means all of the land that will be approved swap land for the CAA1 if the application is approved

substitution date means the date on which the application under section 194KC was submitted.

194KE Effect of land substitution

(1) This section applies if the EPA approves an application under section 194KD.

(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 189DA); and
   (b) if any of the land in a substitute CAA6 is already in a carbon accounting area, the participant for that land is liable to surrender the number of New Zealand units equal to the unit balance of that carbon accounting area; and
   (c) in respect of the remainder CAA6s and substitute CAA6s,—
      (i) the person becomes a participant in the activity on 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 approved swap land for the original CAA1 (together with any approved swap 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 approved swap land; and
(iii) the person is not liable to surrender units (because the unit balance is zero).

(3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.

(4) To avoid doubt, the substitution of land under this section does not affect the release date for the CAA1.

Amendment note:
This section is proposed to be amended further on 30 November 2020 by clause 221 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

Regulations

194LA 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 on 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) prescribing the methodology for determining—

(i) determined carbon stock (section 194FA);
(ii) nominal average carbon stock (section 194FA);
(iii) reference carbon stock (section 194GA):
(iv) expected carbon stock (section 194JA(2)):
(d) for the purposes the definition of first rotation forest (section 194FD),—
(i) prescribing the stand-down period:
(ii) declaring land to have a first rotation forest or a subsequent rotation forest:
(e) prescribing the information to be included in, and other requirements for,—
(i) applications for a carbon equivalent forest land swap (section 194GA):
(ii) notices of compliance with release criteria (section 194JB):
(iii) applications to substitute land under (section 194KC):
(f) prescribing time periods for re-using removed offsetting forest land or excess forest land (section 194GB(2)(c)(iii) and (iv)):
(g) prescribing additional criteria for the approval of—
(i) a land swap application (section 194GB(2)(h)):
(ii) a land substitution application (section 194KD(2)(d)):
(h) prescribing additional release criteria (section 194JA(1)(c)):
(i) prescribing the period for the purposes of the definition of expected carbon stock (section 194JA(2)):

General

(i) 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) a regulation may apply from the commencement of the mandatory emissions return period in which the regulation is made or from a later date in that period:
(b) a regulation made under subsection (1)(d)(i) may prescribe a stand-down period that begins before the regulation is made.

(4) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.
(5) 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.

(6) See also sections 166 (procedure) and 169 to 175 (incorporation by reference).

Subpart 6—Temporary adverse events

194MA Interpretation for subpart 6

(1) In this subpart,—

   adverse event, in relation to temporary adverse event land, means the event referred to in section 194NA(1)(b) as a result of which the land became temporary adverse event land

   affected land has the meaning given in section 194NA(1)

   carbon recovery has the meaning given in section 194RA

   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); or
   (b) if the event occurs in circumstances specified in regulations made under section 194TA, the date provided for in the regulations

   non-established land has the meaning given in section 194QB

   permanently affected land has the meaning given in section 194QB

   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 194TA, unless subsection (2) applies

   re-established land has the meaning given in section 194QB

   re-establishment has the meaning given in section 194QA

   re-establishment date, in relation to an adverse event, means the later of—
   (a) the date 4 years after the event date; or
   (b) in circumstances specified in regulations made under section 194TA, the date provided for in the regulations

   temporary adverse event land means land that has become temporary adverse event land under section 194NC(2)(e) and has not ceased to be so under a provision referred to in section 194PA.
(2) For the definition of pre-event carbon stock rate,—
   (a) if land that is temporary adverse event land in relation to an adverse event \textit{(event 1)} becomes temporary adverse event land in relation to a later adverse event \textit{(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 approved swap land becomes temporary adverse event land, the pre-event carbon stock rate for the land is the reference carbon stock (under section 194GA) per hectare of the CAA1 for which the land is approved swap land.

\textit{Application}

\textbf{194NA Application for temporary adverse event suspension}

(1) Post-1989 forest land is \textit{affected land} if—
   (a) the land is in a carbon accounting area (a \textit{CAA1})—
       (i) that is a carbon accounting area (averaging); or
       (ii) for which a person is a participant in an activity of permanent forestry; and
   (b) the land is affected by an event of a kind prescribed in regulations made under section 194TA (the \textit{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 affected land in each CAA1 is equal to or greater than any minimum prescribed in regulations made under section 194TA; and
   (e) the extent of carbon stock lost from each CAA1 is equal to or greater than any minimum prescribed in regulations made under section 194TA.

(2) A participant in an activity of standard forestry or permanent forestry on 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 189BA for the activity—
       (i) that covers the CAA1s; and
       (ii) that uses the day before the event date as the \textit{relevant date}; and
   (c) include in that return a new unit balance report prepared under section 189EA for the activity that covers the following carbon accounting areas (\textit{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 194TA.

(4) The application must—
(a) be signed by the participant; and
(b) be submitted by the deadline prescribed in regulations made under section 194TA; 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).

194NB Criteria of temporary adverse event suspension

(1) If a person submits an application under section 194NA 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 the regulations made under section 194TA; and
(c) the EPA is satisfied that the land in the affected CAA2s—
(i) is likely to achieve re-establishment under section 194QA; and
(ii) is likely to achieve carbon recovery under section 194RA; and
(d) any other criteria prescribed in regulations made under section 194TA are met.

194NC Approval of temporary adverse event suspension

(1) This section applies if the EPA approves an application for a temporary adverse event suspension under section 194NB.

(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 189DA); 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 approval of land as temporary adverse event land is subject to any conditions prescribed in regulations made under section 194TA.

(4) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.

**Temporary adverse event land**

**194PA Duration of temporary adverse event land status**

(1) Land that becomes temporary adverse event land under section 194NC(2)(e) remains temporary adverse event land until one of the following occurs:

(a) the land achieves carbon recovery and is released from being temporary adverse event land under section 194RB;
(b) the person ceases to be a participant because of section 188AB (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 194NC(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 194QC(2)(d);
(e) the land is permanently affected land and ceases to be temporary adverse event land under section 194QC(2)(e);
(f) the land ceases to be temporary adverse event land under section 194SA because of a breach of condition;
(g) the land ceases to be temporary adverse event land under section 194SB because of deforestation or early clearing.

(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 194CC 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.
194PB  Effect of being temporary adverse event land

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 194PC to 194PF.

194PC  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 194DF and 194DG, and the participant is liable to surrender units under those sections if they apply.

(3) If provided in regulations made under section 194TA, the participant is not required to—
   (a) calculate emissions and removal 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.

194PD  First rotation forest

(1) If temporary adverse event land is in 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 194FD applies.

194PE  Reconfiguration restrictions

(1) A carbon accounting area containing temporary adverse event land cannot be reconfigured (whether by application under section 194CA 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 188AB and 191BA (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 194QB;
(e) to remove land that has ceased to be temporary adverse event land when section 194SC(5) applies.

194PF 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 188AB (then see section 194PA(1)(b)); or
   (b) if that is apparent at the re-establishment date and the participant has not notified the EPA under section 188AB, the participant must identify the land as permanently affected land under section 194QB (then see section 194QC(2)(e)); or
   (c) if that becomes apparent after the re-establishment date, the participant may notify the EPA under section 188AB (then see section 194PA(1)(b)).

(2) To avoid doubt, if approved swap land is affected by another event that permanently prevents re-establishing a forest on that land, the participant may comply with section 188AB in relation to that event.

Re-establishment

194QA Re-establishment criteria
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%.

194QB Notice of achievement of re-establishment
(1) A participant in an activity of standard forestry or permanent forestry on 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 189BA 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 189EA 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;

(d) include any information prescribed in the regulations under section 194TA.

(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 new unit balance report required by subsection (2)(b) and (c), sections 189BA to 189EA 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.
194QC  Effect on re-establishment date

(1) This section applies if a person gives the EPA a notice in accordance with section 194QB, 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 189DA); 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 194SC 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 188(2), to record the effects of this section.
Carbon recovery

194RA 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 194TA) is equal to the pre-event carbon stock rate.

194RB 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 a participant gives the EPA notice in accordance with this section, the land is taken to have recovered and 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

194SA Cancellation for breach of conditions

(1) If the EPA is satisfied that a condition applying under section 194NC(3) 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 194SC 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 them at least 60 working days to—

(i) rectify the non-compliance; or

(ii) show cause 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.

194SB 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 194SC 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 194SC is the date 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 194SC is the 10 or 20 year date under section 179.

194SC 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 194QC(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 194SA, for which the reversion date is the date of the cancellation;

(c) land that ceases to be temporary adverse event land under section 194SB, for which the reversion date is the date specified in that section.

**Act reapplies**

(2) Starting on the reversion date, the provisions of the 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 re-establishment 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 194PE(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 194ED(2).

**Regulations**

194TA **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 section 194MA;

(b) prescribing the methodology for determining:

(i) pre-event carbon stock rate (section 194MA);

(ii) carbon stock loss (section 194NA);

(iii) carbon stock for the purpose of determining carbon recovery (section 194RA);

(c) prescribing the kinds of events that are adverse events (section 194NA);
(d) prescribing—
(i) minimum affected area (section 194NA(1)(d));
(ii) minimum carbon stock loss (section 194NA(1)(e));
(e) prescribing other information to be included in, the submission date for, and other requirements for applications made under section 194NA;
(f) prescribing notification requirements and other criteria for approval under section 194NB;
(g) prescribing conditions for section 194NC(3);
(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 194PC(3));
(i) prescribing other information to be included in, and other requirements for, notices under section 194QB;
(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 also sections 166 (procedure) and 169 to 175 (incorporation by reference).

Post-1989 forest land and pre-1990 forest land

Subpart 7—General

Input returns before actual emissions returns

194UA 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.
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.

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.

In this section, regulations means regulations made under section 194UC.

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

(1) This section applies if the EPA receives an input return in accordance with section 194UA.

(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 were 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 its calculations under this section, and the EPA’s calculations or notice do no affect any obligation of the participant under this Act (such as the obligation to submit an accurate emissions return).

**194UC 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) Before recommending the making of regulations under this section, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by the regulations.

(3) The process for consultation must include—

(a) giving adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and

(b) the provision of a reasonable opportunity for interested persons to consider the recommendation and make submissions; and

(c) adequate and appropriate consideration of submissions.

(4) A failure to comply with this section does not affect the validity of regulations made under it.

(5) 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.

(6) 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

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 pre-1990 forest land, pre-1990 offsetting forest land, or post-1989 forest land in respect of which a person has registered as a participant under section 57, or that the EPA has declared to be exempt land a type of land described by subsection (1A):
(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 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.

(1A) 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) pre-1990 offsetting forest land;
   (iii) post-1989 forest land;
(b) the following types of post-1989 forest land:
   (i) approved swap land (as defined by section 194FA);
   (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.

(2) 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.

(3) 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 (2) if required under regulations made under section 168.

Transitional provisions

First emissions return for pre-1990 forest land activities

(1) Despite anything in this Act, a participant who carries out an activity listed in Part 1 of Schedule 3 in the period commencing on 1 January 2008 and ending on 31 December 2009—
   (a) is not required to submit an annual emissions return under section 65 in relation to the year ending 31 December 2008; but
   (b) must submit an emissions return in respect of the period commencing on 1 January 2008 and ending on 31 December 2009.

(2) Section 65(2) and (3) apply to the return submitted under subsection (1)(b) with all necessary modifications, as if each reference to a year were a reference
to the period commencing on 1 January 2008 and ending on 31 December 2009.

(2A) A participant referred to in subsection (1) must, by 31 May 2011 but not before 1 January 2011, surrender the number of units listed in the participant’s assessment in the emissions return submitted under subsection (1)(b) in relation to the activity.

(3) For all other purposes of this Act, the emissions return submitted under subsection (1)(b) is to be treated as an annual emissions return required to be submitted under section 65.

(4) Despite anything in this Act, a participant who carries out an activity listed in Part 1 of Schedule 3 may not submit an emissions return before 1 January 2010.

(5) Despite anything in section 56, if an activity listed in Part 1 of Schedule 3 is carried out in 2008 or 2009, the person who carried out the activity has until 31 January 2010 to give notice to the EPA under section 56(1).

(6) To avoid doubt, a person who carried out an activity listed in Part 1 of Schedule 3 on or after 1 January 2008, but before this section came into force, must register as a participant under section 56(1) in accordance with subsection (5).

(7) Despite section 129(1)(b)(i), a person who carried out, before the commencement of this subsection, an activity listed in Part 1 of Schedule 3 for the period commencing with 1 January 2008 and ending with the close of 31 December 2009 is not liable under section 129(1)(b)(i) if the person notifies the EPA of that activity on or before 31 January 2010.

196A Power to withdraw or suspend certain draft allocation plans

[Repealed]

197 First emissions return for post-1989 forest land activities

Despite anything in this Act, the first emissions return submitted by a person to whom section 189 applies in respect of an activity listed in Part 1 of Schedule 4 may not be submitted before 1 January 2009.

Forestry classifications of land

196A 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 196B (initial classification), 196D (change of classification to correct error), 196E (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):
- 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.

196B 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 196G.

196C 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 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.

196D 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 196G.

196E 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 196G.

196F 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 196B, 196D, or 196E 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 196G.

(3) In all other respects, the forestry classification must be applied to that period.
To avoid doubt, where the forestry classification is ignored under subsection (2), the earlier forestry classification (if any) applies instead.

196G 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 196F, be before the date of the decision if the classification is changed under section 196D or 196E, 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 196E(1)(a);

(d) specifying matters for the purposes of section 196F(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).

Grant-funded forests

197 Entitlement to units for removals from grant-funded forests

A participant in an activity of standard forestry or permanent forestry on 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 regulation 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.

Subpart 2—Liquid fossil fuels sector

Part 5A

Sector-specific provisions: liquid fossil fuels

198 Registration as participant by purchasers of obligation fuel

(1) An application under section 57 to be registered as a participant in respect of an activity listed in Part 3 of Schedule 4 may be submitted to the EPA at any time.

(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,—

(a) the EPA must notify, under section 57(6)(b), every person who is registered under section 56 in respect of an activity in Part 2 of Schedule 3; and

(b) 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 3 of Schedule 4, the EPA must—

(a) notify, under section 58(3)(c), every person who is registered under section 56 in respect of an activity listed in Part 2 of Schedule 3; and

(b) 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) and (c).

(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.

199 Historical information sufficient to satisfy EPA

(1) A person who carries out an activity listed in Part 3 of Schedule 4 may, in an application to register as a participant in respect of that activity submitted under section 57, include with the application information about the total volume of obligation fuel purchased by the person in the year prior to the year in which the person submits the application (and any other prior years the person wishes).

(2) If the EPA receives an application under section 57 that includes the information specified in subsection (1), the EPA may, for the purposes of section 57(4), satisfy itself that the person is, or will be when the person’s registration takes effect, carrying out the activity listed in Part 3 of Schedule 4 on the basis of that information.

(3) Nothing in this section prevents the EPA from requiring a person specified in subsection (1) to provide any further information that the EPA requires to satisfy him or herself that the person is, (or will, when the person’s registration takes effect, be) carrying out the activity listed in Part 3 of Schedule 4.

200 Effect of purchasing less than threshold level of obligation fuel

If a person is a participant in respect of the activity listed in Part 3 of Schedule 4, and in any year the volume of obligation fuel that the person purchases is less than, or the person knows that the volume purchased will be less than, the threshold specified in Part 3 of Schedule 4—

(a) the person is not required to notify the EPA under section 59(1) that the person has ceased, or will cease, to carry out the activity; and

(b) the EPA must not, under section 59(2), treat the person as having ceased to carry out the activity; and

(c) the person remains a participant in respect of the activity until the person’s name is removed, in accordance with this Act, from the register that is kept for the purposes of section 57.

201 Effect of registration by purchasers of obligation fuel

A participant in respect of an activity listed in Part 2 of Schedule 3 is not required to surrender units in respect of obligation fuel that is purchased by a person who is a participant in respect of an activity listed in Part 3 of Schedule 4.

202 Activities added to Part 2 of Schedule 3

(1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, amend Part 2 of Schedule 3 by adding activities relating to the following matters:
(a) owning or operating a ship onto which goods are loaded at any port in New Zealand for carriage to and unloading at any other port in New Zealand, if the ship consumes fuel that is purchased—
   (i) outside New Zealand; or
   (ii) in New Zealand, but in respect of which no participant is required to surrender units under this Act; or

(b) fishing within New Zealand’s exclusive economic zone, if the vessel used for fishing consumes fuel that is purchased outside New Zealand.

(2) The Minister may only recommend that an Order in Council be made under subsection (1) if—
   (a) no participant is, prior to making the recommendation, liable to surrender units in respect of the emissions from the fuel consumed while the activity that is to be the subject of the recommendation is carried out; and

   (b) adding the activity is—
      (i) necessary to ensure that A is similar to B, where—
         (A) A is the cost increases that a person carrying out the activity will face, if the activity is added, due to the obligation imposed by this Act on the person to surrender units in respect of the emissions from the fuel consumed while carrying out the activity; and

         (B) B is the cost increases that a person carrying out a comparable activity faces due to any obligations imposed by this Act on persons carrying out an activity listed in Part 2 of Schedule 3 to surrender units in respect of the emissions from the fuel consumed while the comparable activity is carried out; and

      (ii) not inconsistent with New Zealand’s international obligations; and

   (c) recommending the order will not result in costs to the Crown that exceed the benefits that the Crown expects to receive after the order is made.

(3) An Order in Council made under subsection (1) takes effect for the removal activity or activities concerned on and from—
   (a) 1 January of the next year, if made on or before 30 June in any year; or

   (b) 1 July of the next year, if made on or after 1 July in any year.

202A Orders are confirmable instruments

The explanatory note of an Order in Council made under section 202(1) must indicate that—
it is a confirmable instrument under section 47B of the Legislation Act 2012; and
(b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
(c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

203 Treatment of obligation fuels
(1) This section applies if, in breach of the Customs and Excise Act 2018, a participant fails to remove obligation fuel for home consumption.

(2) If this section applies, the obligation fuel that was not removed for home consumption must, for the purposes of this Act, be treated as obligation fuel removed for home consumption under the Customs and Excise Act 2018.

Subpart 3—Stationary energy sector

Part 5B
Sector-specific provisions: stationary energy

204 Participant with respect to mining coal or natural gas
(1) This section applies if the following activities listed in Part 3 of Schedule 3 are carried out—
(a) mining coal where the volume of coal mined exceeds 2 000 tonnes in a year:
(b) mining natural gas, other than for export.

(2) If this section applies and—
(a) a permit is required under the Crown Minerals Act 1991 to carry out the mining, then the person who holds the permit is to be treated as the person carrying out the activity; or
(b) no permit is required to carry out the mining, then the owner of the mine is to be treated as the person carrying out the activity.

(3) Despite subsection (2)(a), subsection (4) applies if—
(a) a permit relating to mining coal is held by 2 or more persons jointly under terms that entitle the individual holders to a proportion of the coal mined under the permit; or
(b) a permit relating to mining natural gas is held by 2 or more persons jointly under terms that entitle the individual holders to a proportion of the gas mined under the permit.

(4) If this subsection applies,—
(a) section 157 does not apply; and
(b) each of the individual holders referred to in subsection (3)—
   (i) is to be treated as the person carrying out the activity referred to in
       subsection (1) in relation to any natural gas or coal (as applicable) to
       which the person is entitled under the permit; and
   (ii) must comply with the obligations of a participant under this Act in
       relation to the natural gas or coal (as applicable) to which the per-
       son is entitled under the permit.

205 Mining natural gas in exclusive economic zone and continental shelf

(1) This Act applies to the activity of mining natural gas, other than for export,
listed in Part 3 of Schedule 3, if that activity is carried out anywhere within the
territorial limits of New Zealand, the exclusive economic zone, or in, on, or
above the continental shelf.

(1A) To avoid doubt, a person who carries out the activity of mining natural gas,
other than for export, anywhere within the territorial limits of New Zealand, the
exclusive economic zone, or in, on, or above the continental shelf is not to be
   treated as importing the natural gas mined from that activity for the purposes of
   this Act.

(2) For the purposes of this section,—
   continental shelf has the same meaning as in section 2(1) of the Continental
   Shelf Act 1964
   exclusive economic zone has the same meaning as in section 9 of the Territor-
   ial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.

206 Obligation with respect to combusting used oil, waste oil, and waste

A participant who carries out the activity of combusting used oil, waste oil,
used tyres, or waste for the purpose of generating electricity or industrial heat
listed in Part 3 of Schedule 3 is not required to surrender units in respect of any—
   (a) emissions that result from the combustion of used oil or waste oil if the
       used oil or waste oil combusted is an obligation fuel; or
   (b) carbon dioxide that results from the combustion of waste that is organic
       waste.

207 Obligation with respect to mining coal

A participant who carries out the activity of mining coal, where the volume of
coal mined exceeds 2 000 tonnes in a year, listed in Part 3 of Schedule 3—
   (a) is not required to surrender units in respect of any carbon dioxide emis-
       sions from any coal that is exported:
   (b) is required to surrender units in respect of any coal seam gas emissions
       that result from the activity.
208 Purchase of coal or natural gas from certain related companies of Part 3 of Schedule 3 participant

(1) For the purposes of the activities listed in Part 4 of Schedule 4, the reference to a participant who mines coal or natural gas includes the following persons:

(a) a wholly owned subsidiary of a participant who mines coal or natural gas:

(b) a holding company of which a participant who mines coal or natural gas is a wholly owned subsidiary:

(c) another wholly owned subsidiary of a holding company of which a participant who mines coal or natural gas is the wholly owned subsidiary.

(2) In subsection (1), subsidiary and holding company have the same meaning as in section 5 of the Companies Act 1993.

209 Registration as participant by purchasers of coal or natural gas

(1) An application under section 57 to be registered as a participant in respect of an activity listed in Part 4 of Schedule 4 may be submitted to the EPA at any time.

(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,

(a) the EPA must notify, under section 57(6)(b), every person who—

   (i) mines—

      (A) coal, if the activity specified in the application is purchasing coal; or

      (B) natural gas, if the activity specified in the application is purchasing natural gas; and

   (ii) is registered under section 56; and

(b) 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—

(a) notify, under section 58(3)(c), every person who—

   (i) mines—

      (A) coal, if the activity specified in the application is purchasing coal; or

      (B) natural gas, if the activity specified in the application is purchasing natural gas; and

   (ii) is registered under section 56; and
(b) 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) and (c).

(4) Despite anything in subsection (2)(b), if the EPA receives an application submitted under subsection (1) by 31 January 2009, registration of the applicant as a participant may take effect from 1 January 2010 if—
(a) the applicant requests in the application that registration take effect from 1 January 2010; and
(b) the EPA has provided notification under section 57(6) by 31 March 2009 (which notice must specify 1 January 2010 as the date from which registration takes effect).

(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.

210 Historical information sufficient to satisfy EPA

(1) A person who carries out an activity listed in Part 4 of Schedule 4 may, in an application to register as a participant in respect of that activity submitted under section 57, include with the application information about the total volume of coal or natural gas, as the case may be, purchased by the person in the year prior to the year in which the person submits the application (and any other prior years the person wishes).

(2) If the EPA receives an application under section 57 that includes the information specified in subsection (1), the EPA may, for the purposes of section 57(4),
satisfy itself that the person is (or will, when the person’s registration takes effect, be) carrying out an activity listed in Part 4 of Schedule 4 that is specified in the application on the basis of that information.

(3) Nothing in this section prevents the EPA from requiring a person specified in subsection (1) to provide any further information that the EPA requires to satisfy itself that the person is, or will be when the person’s registration takes effect, carrying out the activity listed in Part 4 of Schedule 4 that is specified in the application.

211 Effect of purchasing less than threshold level of coal or natural gas

If a person is a participant in respect of an activity listed in Part 4 of Schedule 4, and in any year the volume of coal or natural gas that the person purchases is less than, or the person knows that the volume purchased will be less than, the thresholds specified in Part 4 of Schedule 4,—

(a) the person is not required to notify the EPA under section 59(1) that the person has ceased, or will cease, to carry out the activity; and

(b) the EPA must not, under section 59(2), treat the person as having ceased to carry out the activity; and

(c) the person remains a participant in respect of the activity until the person’s name is removed, in accordance with this Act, from the register that is kept for the purposes of section 57.

211A Effect of stockpiling coal by coal importer or miner

(1) This section applies to a person if—

(a) they are registered as a participant in an activity listed in Part 3 of Schedule 3 of—

(i) importing coal; or

(ii) mining coal where the volume of coal mined exceeds 2,000 tonnes in a year; and

(b) any of the coal they imported or mined as a participant in that activity has not been used or sold, gifted, or otherwise provided free of charge to anyone else.

(2) If this section applies to a person,—

(a) the person must not notify the EPA under section 59(1) that they have ceased, or will cease, to carry out the activity; and

(b) the EPA must not, under section 59(2), treat the person as having ceased to carry out the activity; and

(c) the person remains a participant in the activity until their name is removed, in accordance with this Act, from the register that is kept for the purposes of section 57.
212 Effect of registration by purchasers of coal or natural gas

A participant who mines coal or mines natural gas is not required to surrender units in respect of coal or natural gas that is purchased by a person who is a participant in respect of an activity listed in Part 4 of Schedule 4.

Subpart 4—Agriculture

Part 5C

Sector-specific provisions: agriculture

213 Participant in respect of subpart 4 of Part 5 of Schedule 3

(1) If an activity listed in subpart 4 of Part 5 of Schedule 3 is carried out, the landowner of the land on which it is carried out is to be treated as the person carrying out the activity unless the EPA is satisfied that there is a written agreement in place between the landowner and a third party that—

(a) allows access by the third party to the land on which the activity listed in subpart 4 of Part 5 of Schedule 3 is being carried out and the third party is carrying out the activity listed in subpart 4 of Part 5 of Schedule 3 on the land; and

(b) was entered into—

(i) on or after the date appointed in the Order in Council under section 2A(9) that applies the activity listed in subpart 4 of Part 5 of Schedule 3 to the person carrying out the activity, and is for a term of at least 3 years; or

(ii) before the date appointed in the Order in Council under section 2A(9) that applies the activity listed in subpart 4 of Part 5 of Schedule 3 to the person carrying out the activity, and had at least 3 years until expiry at the date appointed in the Order in Council.

(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 specified in subsection (2), a third party, is to be treated as carrying out an activity listed in subpart 4 of Part 5 of Schedule 3.

214 Units not required to be surrendered for fertilisers embedded in products

A participant who carries out the activity listed in subpart 1 of Part 5 of Schedule 3 of importing or manufacturing synthetic fertilisers containing nitrogen is not required to surrender units in respect of any synthetic fertiliser containing nitrogen that—

(a) is permanently embedded in a product as part of a manufacturing process; and
Effect of purchasing or farming less than threshold level

[Repealed]

Effect of registration by farmers

[Repealed]

Subpart 5—Transitional provisions

Part 5D

Sector-specific provisions: transitional provisions

217 Transitional provision for penalties

(1) This section applies to a participant who submits an annual emissions return in respect of an activity listed in—

(a) Part 1 of Schedule 3 that relates to the period 1 January 2008 to 31 December 2009; or

(b) Part 2, Part 3, or subpart 1 of Part 4 of Schedule 3 or Part 3 or 4 of Schedule 4 that relates to the period 1 January 2010 to 31 December 2010; or

(c) subpart 2 of Part 4 or Part 6 of Schedule 3 that relates to the period 1 January 2013 to 31 December 2013; or

(d) subpart 1 or 3 of Part 5 of Schedule 3 that relates to the period—

(i) beginning on the date that surrender obligations for agriculture start; and

(ii) ending on the close of 31 December of the year in which surrender obligations for agriculture started; or

(e) subpart 2 or 4 of Part 5 of Schedule 3 that relates to the first year in respect of which the participant is required to surrender units for emissions from the activity.

(2) Despite anything in this Act,—

(a) a participant to whom subsection (1)(a) applies is not liable under section 129(1)(a) for a failure to comply with section 62 in relation to the period before—

(i) section 62 comes into force; and

(ii) any regulations setting out the data or other prescribed information to be collected in relation to an activity listed in Part 1 of Schedule 3 come into force;
(b) if the emissions return of a participant to whom subsection (1) applies is amended by the EPA under section 120, the participant—

(i) is liable to surrender any units or additional units required to be surrendered under section 123(3); but

(ii) is not liable to pay an excess emissions penalty under section 134(2)(b)(ii) or 134A(2)(b) a penalty under section 134, 134A, or 134C in relation to those units:

(c) if a participant to whom subsection (1) applies fails to surrender units or additional units as required under section 123(3), section 159(1)(a) applies as if the date of the notice given under section 123(3) were the date of the penalty notice given under section 134, 134A, or 136 section 134.

218 Transitional provision for voluntary reporting

(1) This section applies to—

(a) a person who carries out an activity listed in—

(i) Part 2 of Schedule 3 in the period 1 January 2009 to 31 December 2009:

(ii) subpart 1 or 3 of Part 5 of Schedule 3 in the period 1 January 2011 to 31 December 2011:

(iii) subpart 2 of Part 4 of Schedule 3 or Part 6 of Schedule 3 in the period 1 January 2011 to 31 December 2011:

(iv) subpart 2 or 4 of Part 5 of Schedule 3 in the year commencing on a date appointed by Order in Council made under section 2A(8) or (9) (to the extent the order applies to persons carrying out an activity listed in those subparts) on and after which the relevant subpart applies to the person; or

(b) a person who is a participant in relation to an activity listed in—

(i) Part 3 of Schedule 4 in the period 1 January 2009 to 31 December 2009:

(ii) subpart 3 of Part 2 of Schedule 4 in the period 1 January 2011 to 31 December 2011:

(iii) [Repealed]

(1) This section applies to a person who carries out an activity listed in subpart 2 of Part 5 of Schedule 3 in 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 those subparts) on and after which the relevant subpart applies to the person.

(2) Despite anything in this Act, a person to whom this section applies—

390
(a) may (but is not required to), if the person carries out an activity in subsection (1)(a)(i) to (iii) during the relevant period, notify the EPA under section 56 that the person is a participant in respect of the activity;

(ab) must, if the person carries out an activity specified in subsection (1)(a)(iv) during the relevant period, notify the EPA under section 56 that the person is a participant in respect of the activity:

(b) may (but is not required to), if the person has notified the EPA that the person carries out an activity in subsection (1)(a), or is a person to whom subsection (1)(b) applies, submit an annual emissions return under section 65 or an emissions return under section 66 or 118 in respect of the activity and the period in subsection (1):

(c) may not surrender units in relation to any emissions, and is not entitled to New Zealand units in relation to any removals, in respect of the relevant activity and period in subsection (1):

(d) is not required to comply, except as provided in paragraph (ab), with any of the obligations of a participant under this Act in respect of the relevant activity and period in subsection (1):

(e) is not liable under the offence provisions in sections 129 to 133 for any acts or omissions in relation to the relevant activity and period in subsection (1).

(3) The EPA must not include information obtained from an emissions return submitted in accordance with subsection (2)(b) in the information published under section 89.

219 Transitional provision for mandatory reporting by certain participants

(1) This section applies to—

(a) a person who carries out an activity listed in—

(i) Part 2, Part 3, or subpart 1 of Part 4 of Schedule 3 in the period 1 January 2010 to 30 June 2010;

(ii) subpart 1 or 3 of Part 5 of Schedule 3 in the period—

(A) beginning on 1 January 2012; and

(B) ending on the date that surrender obligations for agriculture start;

(iii) subpart 2 of Part 4 of Schedule 3 or Part 6 of Schedule 3 in the period 1 January 2012 to 31 December 2012;

(iv) subpart 2 or 4 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) or (9) (to the extent the order applies to persons carrying out an activity listed in those subparts) on and after which the relevant subpart applies to the person; or
(b) a person who is a participant in relation to an activity listed in Part 3 or 4 of Schedule 4 in the period 1 January 2010 to 30 June 2010.

(1) This section applies to a person who carries out an activity listed in any of the following:
   
   (a) subpart 1 or 3 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 agriculture 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 those subparts) on and after which the relevant subpart applies to the person:
   
   (c) subpart 4 of Part 5 of Schedule 3 in the 2024 calendar year.

(2) Despite anything in this Act, a person to whom this section applies may not surrender units—
   
   (a) under section 65(4) in relation to any emissions reported in the person’s annual emissions return for the relevant period referred to in subsection (1); or
   
   (b) under section 118(5) in relation to any emissions reported in an emissions return submitted under section 118 that relates to the relevant period referred to in subsection (1).

(3) In addition to the requirements specified in section 65, a person to whom subsection (1)(a)(i) or (b) applies must record in that person’s annual emissions return for the period 1 January 2010 to 31 December 2010 the emissions from the activity listed in Part 2, Part 3, or subpart 1 of Part 4 of Schedule 3 or Part 3 or 4 of Schedule 4, calculated under section 62(b) and, if required, verified under section 62(c), for the period 1 July 2010 to 31 December 2010.

(4) For the purposes of calculating emissions for the period 1 July 2010 to 31 December 2010 under subsection (3)—
   
   (a) references to a year in the Climate Change (Liquid Fossil Fuels) Regulations 2008 and the Climate Change (Stationary Energy and Industrial Processes) Regulations 2009 must be treated as references to the period 1 July 2010 to 31 December 2010; and
   
   (b) the provisions of the regulations specified in paragraph (a) apply to emissions described in subsection (3) with any necessary modifications.

(5) Subsections (3) and (4) apply with any necessary modifications to a return that covers any part of the period 1 January 2010 to 31 December 2010 that is submitted under section 118 by a person to whom subsection (1)(a)(i) or (b) applies.
Transitional provision relating to unit entitlements for subpart 1 or 3 of Part 2 of Schedule 4 participants

Despite anything in this Act,—

(a) a person who is a participant in respect of an activity listed in subpart 1 of Part 2 of Schedule 4 and submits an annual emissions return for the period 1 January 2010 to 31 December 2010, or any other emissions return that relates to dates within the period 1 January 2010 to 30 June 2010, is not entitled to be transferred units under section 64 in relation to any removals from the activity reported in any return in respect of the period 1 January 2010 to 30 June 2010; and

(b) a person who is a participant in relation to an activity listed in subpart 3 of Part 2 of Schedule 4 and submits an annual emissions return for the period 1 January 2012 to 31 December 2012, or any other emissions return that relates to dates within that period, is not entitled to be transferred units under section 64 in relation to any removals from the activity reported in that return; and

(c) in addition to satisfying the requirements in section 65, a person to whom paragraph (a) applies must record removals calculated under section 62(b) and, if required, verified under section 62(c), for the period—

(i) 1 July 2010 to 31 December 2010, in the person’s annual emissions return for the period 1 January 2010 to 31 December 2010; and

(ii) 1 July 2010 to 31 December 2010, in any emissions return submitted under section 66 that covers the dates within that period; and

(iii) 1 July 2010 to 30 September 2010, in any emissions return submitted under section 66 that covers dates within that period.

Additional transitional provisions for Part 3 of Schedule 4 participants

(1) A person who purchases more than 10 million litres per year of obligation jet fuel from 1 or more persons who are likely to become participants in respect of an activity listed in Part 2 of Schedule 3 from 1 January 2010 is, during the period from the date of commencement of this section until 31 December 2009, to be treated for the purposes of this Act as a person carrying out an activity listed in Part 3 of Schedule 4.

(2) Despite section 198(2)(b), the registration of a person who registers as a participant in respect of an activity listed in Part 3 of Schedule 4—

(a) before 1 January 2010, takes effect on 1 July 2010; and

(b) on or after 1 January 2010 and before 1 July 2010, takes effect on the date that is 5 months after the date of entry of the person’s name as a participant in the register under section 57.
A person who is a participant in relation to an activity listed in Part 3 of Schedule 4 during the period from the date of commencement of this section until 31 December 2008 may not submit an annual emissions return or an emissions return under section 118 in respect of that activity for the period up to 31 December 2008.

The provisions of this Act apply with any necessary modifications to an application to register as a participant by a person referred to in subsection (1) as if the person or persons from whom the applicant purchases jet fuel were a participant carrying out an activity listed in Part 2 of Schedule 3.

222 Transitional provisions regarding regulations that replace existing unit register regulations
Section 30H(1) and (3) do not apply to any regulations that—
(a) come into force in 2008; and
(b) replace the Climate Change (Unit Register) Regulations 2007.

222A Transitional provision for liability to surrender units to cover emissions from activities relating to liquid fossil fuels, stationary energy, and industrial processes
[Repealed]

222B Transitional provision for entitlement to receive New Zealand units for removal activities
[Repealed]

222C Transitional provision permitting payment of money instead of surrender of units to cover emissions
[Repealed]

222D Issuing New Zealand units to meet surrender obligation
[Repealed]

222E Transitional provisions relating to reporting
[Repealed]

222F Transitional provision for allocation to industry
[Repealed]

222G Transitional provision regarding prohibition on ability to export New Zealand units
[Repealed]
222H Transitional provision for unincorporated bodies

(1) This section applies to 3 or more joint owners of land, leaseholders, forestry right holders, or parties to a Crown conservation contract who registered together as a participant (joint participants) in accordance with section 157 before the commencement of this section.

(2) If this section applies, then—
   (a) the joint participants are, on and after the commencement of this section, to be treated as members of an unincorporated body that is a participant, but the unincorporated body is not required to—
      (i) notify the EPA that it is a participant as specified in section 157(2)(c)(ii)(A); or
      (ii) apply to be registered as a participant as specified in section 157(2)(c)(ii)(B); and
   (b) the EPA must notify the joint participants that they are—
      (i) now members of an unincorporated body for the purposes of this Act:
      (ii) required to provide the details specified in section 157(2)(c)(ii)(C) and (2)(d) to the EPA within 20 working days of receiving the notice, unless the EPA has these details; and
   (c) the EPA must, after receiving the information specified in paragraph (b)(ii), update any records relating to the joint participants, including (but not limited to) by removing the names of the joint participants from any register kept under this Act and substituting the name of the unincorporated body.

(3) Failure to provide the information specified in section 157(2)(d)(i) in response to a notice given under subsection (2)(b) must be treated as an offence under section 131(1)(a) and that section applies as if the reference to section 94 in that section were a reference to this section.

(4) If the joint participants fail to provide the information specified in a notice given under subsection (2)(b) within the specified period, the EPA may, as applicable,—
   (a) choose a name for the unincorporated body and update any records relating to the joint participants as specified in subsection (2)(e); and
   (b) nominate 1 of the members of the unincorporated body as the person to whom notices are to be given.

(5) If the EPA updates any records relating to joint participants in accordance with subsection (2)(c) or (4), the EPA must notify the person authorised or nominated to receive notices on behalf of the unincorporated body accordingly.

(6) Despite subsection (2),—
(a) until the EPA updates any records in relation to any joint participants, the joint participants together remain registered as a participant, and are jointly and severally liable for all obligations, and jointly and severally entitled to all benefits, arising from their status as a participant; and

(b) the joint participants whose names have been removed from a register and the unincorporated body whose name has been substituted on that register are to be treated for the purposes of this Act as the same participant.

Part 6
Targets

223 Establishment of Household Fund
[Repealed]

224 Gazetting of targets
[Repealed]

225 Regulations relating to targets
[Repealed]

Part 7
Synthetic greenhouse gas levy

226 Overview of functions and responsibilities of EPA and agencies under this Part, Customs and Excise Act 2018, and Land Transport Act 1998

(1) This section is a guide to the functions and responsibilities of the EPA and the agencies in relation to the synthetic greenhouse gas levy, but it does not affect the interpretation or the application of the provisions of this Part, the Customs and Excise Act 2018, or the Land Transport Act 1998.

(2) Under this Part,—

(a) the functions of the EPA are to—

(i) receive and collate information from the agencies under section 241; and

(ii) publish information in accordance with section 250; and

(iii) monitor compliance with subpart 1; and

(b) the function of the Registrar of Motor Vehicles is to receive payment of the motor vehicle levy under section 228; and

(c) the function of the New Zealand Customs Service is to receive payment of the goods levy under section 229; and
(d) it is a function of the EPA and the agencies to recover unpaid levies under section 230.

(3) Under the Customs and Excise Act 2018, the function of the New Zealand Customs Service is to assess and collect the goods levy and, for this purpose,—
(a) assess and collect the levy on goods as if the levy were a duty; and
(b) recover unpaid levies as if they were unpaid duties.

(4) Under the Land Transport Act 1998, the function of the Registrar of Motor Vehicles is to assess and collect the motor vehicle levy.

Subpart 1—Synthetic greenhouse gas levy

*Levy imposed*

227 Synthetic greenhouse gas levy imposed

(1) A levy is imposed on—
(a) a leviable motor vehicle that is registered on or after 1 July 2013, but is not imposed on a motor vehicle that was registered before 1 July 2013 and registered again on or after 1 July 2013; and
(b) an item of leviable goods that is imported into New Zealand on or after 1 July 2013.

(2) However, if a leviable motor vehicle is registered more than once on or after 1 July 2013, it is liable for the levy only once.

228 Person who registers leviable motor vehicle responsible for paying levy

(1) The person who registers a leviable motor vehicle on or after 1 July 2013 is responsible for paying the levy.

(2) The levy (including any goods and services tax payable on it) must be paid to the Registrar of Motor Vehicles at the same time as the person pays for the registration of the vehicle.

229 Importer of leviable goods must pay levy

(1) A person who imports leviable goods on or after 1 July 2013 must pay the levy at the prescribed rate for the goods.

(2) The person must pay the levy (including any goods and services tax payable on it) to the New Zealand Customs Service at the same time as duty under the Tariff Act 1988 or excise-equivalent duty would be paid on the goods if any were payable.

230 Levies are debt due to the Crown

(1) A levy that becomes payable is a debt due to the Crown.

(2) The EPA may, on behalf of the Crown, recover the debt in a court of competent jurisdiction.
This section does not limit—
(a) the power of the Customs to recover an unpaid amount of goods levy as a debt under the Customs and Excise Act 2018; or
(b) the power of the Registrar of Motor Vehicles to recover an unpaid amount of motor vehicle levy as a debt under the Land Transport Act 1998.

Penalties for failure to pay levy

[Repealed]

Application of provisions of Customs and Excise Act 2018

(1) The provisions of the Customs and Excise Act 2018 that apply to the collection of duties (including, without limitation, subpart 8 of Part 3 of that Act) apply, with all necessary modifications, to the collection of the goods levy under this Act as if the levy were a duty to which that Act applies.

(2) However,—
(a) section 138(2) of that Act applies as if the reference to dutiable goods were a reference to leviable goods:
(b) section 138(3) and (4) of that Act apply as if they did not refer to the owner of the goods or the licensee of a Customs controlled area.

(3) Despite subsection (1), the following provisions of the Customs and Excise Act 2018 do not apply to the collection of the levy:
(a) section 139:
(b) section 144:
(c) section 146:
(d) section 147:
(e) section 153.

Calculation of levy

Rate of synthetic greenhouse gas levy

(1) The levy rate that applies to a leviable motor vehicle, a class of leviable motor vehicle, or an item or a class of leviable goods in a levy year must be calculated in accordance with the following formula:

\[ R = A \times B \times GWP \]

where—
A is the amount of synthetic greenhouse gas contained in the class of leviable motor vehicle or leviable goods, or the item of leviable goods
B is the price of carbon specified under subsection (4)(b)
B is the lesser of $25 and the price of carbon specified by or under regulations made under section 30W.

GWP is the global warming potential specified in regulations for the specified synthetic greenhouse gas.

R is the rate of the levy.

(2) In this section, amount means the weight or any other unit of measurement of a synthetic greenhouse gas prescribed for the purpose of this section in regulations made under section 246(1)(c) or (e).

(3) For the purpose of item A, the amount of synthetic greenhouse gas contained in a leviable motor vehicle or leviable good is—

(a) the amount specified by regulations for that class of leviable motor vehicle or leviable good, or for an item of leviable good; and

(b) if no amount is specified by regulations, the actual amount contained in the leviable motor vehicle or leviable good.

(4) For the purpose of item B, the Governor-General may, by Order in Council made on the recommendation of the Minister,—

(a) prescribe the methodology for specifying the price of carbon; and

(b) specify the price of carbon by applying the methodology.

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

(a) must be made in accordance with the process set out in section 247; and

(b) may not come into force earlier than 3 months after the date of their notification in the Gazette.

(6) Before making a recommendation under subsection (4), the Minister must take into account the following matters:

(a) the price of the units used to calculate revenue from the greenhouse gas emissions trading scheme in the Crown annual financial statements over the preceding 12 months; and

(b) the price of New Zealand units sold by auction under section 6A over the preceding 12 months; and

(e) any changes to the operation of the greenhouse gas 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.

Amendment note:
This section is proposed to be amended further by Order in Council or on 1 January 2023 by clause 228 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.
234 Transitional provision for synthetic greenhouse gas levy

(1) Despite section 233(5), the requirements of that subsection do not apply to regulations made under section 233(4) that apply during the period 1 July 2013 to 31 December 2013 (the transitional period).

(2) However, the methodology prescribed by regulations made under section 233(4)(a) in the transitional period ceases to apply on and from the end of the transitional period.

235 Temporary suspension of levy set by section 233

[Repealed]

236 Maximum price of carbon for purpose of levy calculation

(1) This section applies to the calculation of item B of the formula set out in section 233(1) for the period—

(a) beginning on the date on which this section comes into force; and

(b) ending on the close of the date specified for the purpose of this section as the closure date by the Governor-General by Order in Council made on the recommendation of the Minister.

(2) If, during the period specified in subsection (1), the application of the methodology prescribed under section 233(4)(a) results in a carbon price that is higher than $25, the regulations made under section 233(4)(b) must prescribe a carbon price of $25.

(3) Before the Minister may make a recommendation under subsection (1)(b), the Minister must be satisfied that a person does not meet his or her obligation to surrender, repay, or reimburse units by paying $25 for each unit in accordance with section 178A.

(4) This section overrides section 233.

237 Levy rate exclusive of GST

A levy rate calculated in accordance with section 233 is exclusive of goods and services tax.

238 Levy rate for period from 1 July 2013 to 31 December 2013

[Repealed]

239 Levy rate to apply for single calendar year on and after 1 January 2014

(1) A levy rate applies for 1 levy year.

(2) [Repealed]

(3) If no rate is set before the beginning of a levy year, the levy rate for that year is the same as it was for the preceding levy year.

(4) However, if a levy rate is set for a levy year after the beginning of the levy year, the new levy rate applies from the beginning of the quarter of the levy
year following the date on which the levy rate was set until the close of the levy year.

(5) For the purposes of this section and section 241,—

(a) a levy rate is set on the date on which the regulations prescribing the rate come into force:

(b) the quarters of a levy year are—

(i) 1 January to 31 March:

(ii) 1 April to 30 June:

(iii) 1 July to 30 September:

(iv) 1 October to 31 December.

Levies to be paid into Crown Bank Account

240 Agencies to pay levy into Crown Bank Account

The EPA and the agencies must pay the amount of all levies received under this Part into a Crown Bank Account.

Information

241 Agencies to provide information to EPA quarterly

(1) The agencies must, for each quarter of a levy year, keep records of and provide to the EPA all the following information:

(a) the amount of levy money received:

(b) the number of—

(i) leviable motor vehicles registered:

(ii) consignments of leviable goods imported:

(c) the number of persons who were required to pay the levy by section 228 or 229 (as applicable):

(d) the number of persons who failed to pay the levy as required by section 228 or 229 (as applicable):

(e) the amount of levy money refunded:

(f) the amount of levy money unable to be recovered.

(2) The information described in subsection (1) must be provided for each class of leviable motor vehicle or and for each class of leviable goods.

242 Agencies and EPA to share information

Section 149(2) applies as if the EPA and the agencies were referred to in section 149(1).
243 Circumstances where levy may be refunded

(1) Subsection (2) applies in relation to a levy paid under section 228 on—
   (a) a motor vehicle containing a leviable good; or
   (b) a motor vehicle containing a synthetic greenhouse gas that is, because it is imported after 1 July 2013, subject to the greenhouse gas emissions trading scheme under subpart 2 of Part 4 of Schedule 3.

(2) The EPA, upon application in an approved manner by the person responsible for the payment required under section 228, must refund the motor vehicle levy paid on the relevant motor vehicle, but only if the person applying for the refund establishes, to the satisfaction of the EPA, that—
   (a) the motor vehicle levy has been paid in relation to the relevant motor vehicle; and
   (b) the relevant motor vehicle is one to which subsection (1) applies.

244 Exemptions from payment of synthetic greenhouse gas levy

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, exempt any person or class of persons from—
   (a) paying the whole or part of the levy for certain leviable motor vehicles or leviable goods; or
   (b) being subject to the whole or part of the levy for certain leviable motor vehicles or leviable goods; or
   (c) a combination of the matters specified in paragraphs (a) and (b).

(2) An Order in Council made under subsection (1) may specify any terms and conditions (including, but not limited to, terms and conditions imposing geographical or operational restrictions) that the Governor-General thinks fit.

(3) Before recommending the making of an order under subsection (1), the Minister must be satisfied that—
   (a) the order will not materially undermine the environmental integrity of the synthetic greenhouse gas levy; 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 subsection (1), the Minister must have regard to the following matters:
   (a) the need to maintain the environmental integrity of the synthetic greenhouse gas levy; and
   (b) the desirability of minimising any compliance and administrative costs associated with the synthetic greenhouse gas levy; and
   (c) the relative costs of giving the exemption or not giving it, and who bears the costs; and
(d) any alternatives that are available for achieving the objectives of the Minister in respect of giving the exemption; and

(e) any other matters the Minister considers relevant.

(5) While an order made under this section is in force, any person or class of persons in respect of whom the order is made is not required to comply with the obligation to pay the levy.

(6) Before recommending the making or revocation of an order under this section, the Minister must—

(a) consult with persons that the Minister considers are likely to be substantially affected by the making of the order; and

(b) give those persons the opportunity to make submissions; and

(c) consider those submissions.

**Regulations**

### 245 Regulations specifying levy rates

(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 rate of the levy to apply to 1 or more classes of leviable motor vehicles;

(b) prescribing the rate of the levy to apply to 1 or more items or classes of leviable goods.

(2) Regulations made under subsection (1)(a) may specify different rates for different classes of leviable motor vehicles.

(3) Regulations made under subsection (1)(b) may specify different rates for different classes of leviable goods.

(4) Regulations made under subsection (1) come into force on a date specified in the regulations that may not be earlier than 3 months after the date of their notification in the Gazette.

### 246 Regulations relating to synthetic greenhouse gas levy

(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:

*Specified synthetic greenhouse gases*

(a) specifying a hydrofluorocarbon or perfluorocarbon as a specified synthetic greenhouse gas for the purposes of the levy:

*Leviable motor vehicles*

(b) specifying classes of leviable motor vehicles to which the levy may apply (which may be by reference to the amount of synthetic greenhouse gas that they contain):
(c) specifying the amount of a specified synthetic greenhouse gas that each class of leviable motor vehicles is to be treated as containing:

Leviable goods

(d) specifying leviable goods or classes of leviable goods to which the levy may apply (which may be by reference to the amount of synthetic greenhouse gas that they contain):

(e) specifying the amount of a specified synthetic greenhouse gas that an item or class of leviable goods is to be treated as containing:

General

(f) specifying accounts and records that must be kept by persons collecting levies, or persons who are or may be liable to pay a levy:

(g) specifying the information that persons collecting levies must provide to the EPA and when the information must be provided:

(h) prescribing the data or other information that must be collected under section 248(1)(a) in relation to a class of leviable goods or synthetic greenhouse gases, and, if relevant, the mechanism or method by which the data or information must be collected:

(i) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.

(2) Before making a recommendation for the making of regulations under subsection (1)(a), the Minister must have regard to New Zealand’s international obligations—international climate change obligations relating to synthetic greenhouse gases.

(3) Regulations made under subsection (1)(a) to (e) come into force on a date specified in the regulations that may not be earlier than 3 months after the date of their notification in the Gazette.

247 Process for making orders and regulations

(1) Before making a recommendation for the making of regulations under section 233(4)(a), 246(1)(a) to (e), or section 246(1)(a) to (e) or 258, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulations made in accordance with the recommendation.

(2) The process for consultation must include—

(a) giving adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and

(b) providing a reasonable opportunity for interested persons to consider the recommendation and make submissions; and

(c) giving adequate and appropriate consideration to submissions.
(3) A failure to comply with this section does not affect the validity of regulations made under section 233(1)(a), 246(1)(a) to (e), or section 246(1)(a) to (e) or 258.

Obligations of importers of leviable goods

248 Collecting information and keeping records

(1) An importer must, in relation to the importation of leviable goods containing a specified synthetic gas,——

(a) collect the prescribed data or other prescribed information (which data or information must, if required by regulations, be verified by a person or an organisation recognised by the EPA for the purpose); and

(b) keep records of the data or information in the prescribed format (if any); and

(c) keep sufficient records to enable the EPA to verify, in relation to any levy year,—

(i) the quantity of leviable goods of each class imported; and

(ii) the total amount of levy paid on those goods.

(2) The records specified in subsection (1) must be kept for a period of at least 7 years after the end of the year to which they relate.

Subpart 2—Administrative provisions and verification

249 Application of section 88 (Directions to EPA)

Section 88 applies in relation to the EPA’s exercise of powers and performance of functions under this Part or any regulations made under this Part as if a reference to Part 5—the ETS participant provisions were a reference to Part 7.

250 EPA to publish information relating to levies

(1) The EPA must publish the following information in relation to leviable goods imported and leviable motor vehicles registered in each reporting year in accordance with subsection (2):

(a) for each class of leviable motor vehicle, the total number of persons who registered a vehicle of that class; and

(b) for each specified synthetic greenhouse gas used in the air-conditioning system of a leviable motor vehicle, the total number of leviable motor vehicles registered; and

(c) for each class of leviable goods, the total number of persons who imported leviable goods of that class; and

(d) for each specified synthetic greenhouse gas treated as contained in a class of leviable goods, the total quantity of goods of that class imported; and
(e) in respect of each class of leviable motor vehicle, the number of leviable
motor vehicles registered; and

(f) in respect of each class of leviable goods, the number of consignments
imported; and

(g) the total quantity of synthetic greenhouse gas treated as contained in the
air-conditioning systems of leviable motor vehicles of each class regis-
tered; and

(h) the total quantity of synthetic greenhouse gas treated as contained in
leviable goods of each class imported; and

(i) the total amount of levy money collected; and

(j) the number of persons who failed to comply with their obligation to pay a
levy.

(2) The EPA—

(a) must publish the information specified in subsection (1) as soon as prac-
ticable after the end of the reporting year; and

(b) may publish the information specified in subsection (1), in whole or in
part, at any other time and in whatever manner and format that the EPA
considers appropriate.

(3) The EPA is not required to publish the information required under subsection
(1)(b), (d), (g), and (h) in respect of an activity if the EPA is satisfied that pub-
lishing the information would result in the disclosure of the amount of syn-
thetic greenhouse gas imported by an identifiable person or in motor vehicles
registered by an identifiable person, unless—

(a) the person to whom the information relates has consented to the publica-
tion of the information; or

(b) the information is already in the public domain.

(4) In this section, reporting year means a 12-month period starting on 1 July and
ending with the close of 30 June.

251 Recognition of verifiers

(1) The EPA may, in accordance with regulations made under section 258, recog-
nise a person or an organisation with the prescribed expertise, technical compe-
tence, or qualifications as a person or an organisation that may undertake veri-
ification functions for the purposes of section 248(1)(a).

(2) A person or an organisation may be recognised by the EPA as able to verify
information in respect of 1 or more classes of leviable motor vehicles or levia-
able goods, or 1 or more items of leviable goods.

(3) The EPA may suspend or revoke any recognition given under this section in
accordance with regulations made under section 258.
252 Enforcement officers

The EPA may appoint 1 or more enforcement officers under section 93 to exercise 1 or more of the powers and perform the functions conferred on enforcement officers under Part 4 in relation to this Part under this Part (which relate to verification and inquiry about compliance with this Part).

253 Power to require information

(1) The EPA or an enforcement officer may, by notice, require a person to provide any information that is reasonably necessary for the purposes of ascertaining whether—
   (a) a person is complying with this Part; or
   (b) the EPA should exercise any powers under this Part.

(2) The EPA or an enforcement officer may require the person who is to provide the information to also provide a statutory declaration attesting to the truthfulness of the information provided.

(3) The information must be provided—
   (a) in the form specified by the person who requested it; and
   (b) within any reasonable time specified in the notice; and
   (c) free of charge.

254 Power to inquire

(1) This section applies for the purpose of obtaining information for a purpose specified in section 253(1), or obtaining any other information required for the purposes of the administration or enforcement of this Part.

(2) The EPA may, by notice, require a person to—
   (a) appear before it or an enforcement officer at a time and place specified in the notice to give evidence; and
   (b) produce a document or class of documents in the person’s possession or under the person’s control.

(3) The EPA or an enforcement officer may require the evidence to be given under oath, and either orally or in writing.

(4) For the purpose of subsection (3), the EPA or an enforcement officer may administer an oath.

(5) Sections 97 and 98 apply to an inquiry under this section.

255 Inquiry before District Court Judge

(1) The EPA may apply in writing to a District Court Judge to hold an inquiry under this section, if the EPA considers it necessary for the purpose of obtaining information for a purpose specified in section 253(1), or obtaining any
other information required for the purposes of the administration or enforce-
ment of this Part.

(2) Section 96(2) to (4) apply in relation to an inquiry under this section as if there
were no reference to the chief executive.

(3) Section 96(5) applies as if the reference to the chief executive were a reference
to the EPA.

(4) Sections 97 and 98 apply to an inquiry under this section.

256 Obligation to maintain confidentiality

(1) The EPA and every enforcement officer—
(a) must keep confidential all information that comes into their knowledge
when performing any function or exercising any power under this Part; and
(b) may not disclose any information described in paragraph (a), except in
the circumstances described in section 99(2)(b).

(2) However, to avoid doubt, the EPA may,—
(a) provide or publish general guidance in relation to the operation of this
Part; and
(b) with the prior approval of the Minister, prepare statistical information
and provide it to any person in a form that does not identify any indi-
vidual.

257 Power of entry for investigation, warrants, etc

(1) Sections 100 and 102 to 106 apply in relation to this Part as if every reference
to Part 5 the ETS participant provisions were a reference to Part 7.

(2) Section 101 applies as if every reference to section 129, 132, or 133 included a
reference to sections 259, 261, and 263.

258 Regulations relating to verifiers

(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 data or other information that must be verified by a per-
son or an organisation recognised by the EPA under section 251; and
(b) prescribing, for the purposes of section 251,—
(i) the process by which a person or an organisation may be recog-
nised as being able to verify information or calculations for the
purposes of section 248; and
(ii) the expertise, technical competence, or qualifications required for
recognition as a person or an organisation able to verify data or
information; and
(iii) any additional—
   (A) requirements for recognition of an organisation; and
   (B) restrictions on the employees of the organisation who may carry out the duties of the organisation in respect of the recognition; and

(iv) the period for which a person or an organisation may be recognised, and the process for the renewal of recognition; and

(v) conditions of recognition, which may include ongoing competency and professional standard requirements, membership of a professional body, and the provision of reports to the EPA; and

(vi) the procedure for, and circumstances in which, recognition may be suspended or revoked; and

(vii) fees to enable the recovery of the direct and indirect costs of the EPA in recognising a person or an organisation, which may vary depending on the class of persons or organisations, or the type of verification in respect of which recognition is sought.

(2) Regulations made under subsection (1) may apply—
   (a) generally or with respect to different classes of activity, persons, parts of New Zealand, or other specified things; or
   (b) in respect of the same classes of activity, persons, parts of New Zealand, or other specified things, in different circumstances; or
   (c) generally or at any specified time of each year.

(3) Before making a recommendation for the making of regulations under subsection (1)(a), the Minister must have regard to New Zealand’s international obligations in respect of the collection of data and information relating to specified synthetic greenhouse gases.

Subpart 3—Offences and penalties

Offences relating to synthetic greenhouse gas levy

259 Offence in relation to failure to collect data and keep records

(1) A person who is an importer commits an offence against this Act if the person, without reasonable excuse, fails to comply with section 248(1) (requirement to collect data or other information and keep records).

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—
   (a) the first time the person is convicted of that offence, to a fine not exceeding $8,000:
   (b) the second time the person is convicted of that offence, to a fine not exceeding $16,000:
(c) on every subsequent occasion that the person is convicted of that offence, to a fine not exceeding $24,000.

260  Failure to provide information or documents

(1) A person commits an offence against this Act if the person, without reasonable excuse,—
   (a) fails to provide information to the EPA or an enforcement officer when required to do so under section 253; or
   (b) fails to appear before the EPA or an enforcement officer, or fails to produce any document or documents, when required to do so under section 254.

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—
   (a) in the case of an individual, to a fine not exceeding $12,000;
   (b) in the case of a body corporate, to a fine not exceeding $24,000.

261  Other offences

(1) A person commits an offence against this Act if the person, without reasonable excuse,—
   (a) refuses to take an oath when required to do so under section 254; or
   (b) refuses to answer any question when required to do so under section 254; or
   (c) knowingly fails to comply with section 248(1) (requirement to collect data or other information and keep records); or
   (d) knowingly provides altered, false, incomplete, or misleading information to the EPA, an enforcement officer, or any other person in respect of any matter in this Part; or
   (e) wilfully obstructs, hinders, resists, or deceives—
      (i) the EPA or an enforcement officer exercising a power conferred on that person under this Part; or
      (ii) the New Zealand Customs Service, a Customs officer, or a Customs Appeal Authority in relation to a power conferred on that person under the Customs and Excise Act 2018 in relation to the goods levy; or
      (iii) the Registrar of Motor Vehicles in relation to a power conferred on him or her under the Land Transport Act 1998 in relation to the motor vehicle levy.

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—
   (a) in the case of an individual, to a fine not exceeding $25,000:
(b) in the case of a body corporate, to a fine not exceeding $50,000.

262 Offence for breach of confidentiality

A person who knowingly contravenes section 256 commits an offence and is liable on conviction to either or both of—

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

263 Evasion

(1) A person commits an offence against this Act if the person, with intent to deceive and for the purpose of either obtaining any material benefit or avoiding any material detriment,—

(a) fails to comply with section 248(1) (requirement to collect data or other information and keep records); or
(b) fails to provide information to—

(i) the EPA, an enforcement officer, or any other person when required to do so under this Part; or
(ii) the New Zealand Customs Service, a Customs officer, or a Customs Appeal Authority when required to do so under the Customs and Excise Act 2018 in relation to the goods levy; or
(iii) the Registrar of Motor Vehicles when required to do so under the Land Transport Act 1998 in relation to the motor vehicle levy; or

(c) provides altered, false, incomplete, or misleading information to the Minister or the EPA or any other person in respect of a matter in this Part.

(2) Every person who is convicted of an offence against subsection (1) is liable on conviction to either or both of—

(a) imprisonment for a term not exceeding 5 years:
(b) a fine not exceeding $50,000.

Offence in relation to release of synthetic greenhouse gases

264 Offence in relation to release of synthetic greenhouse gases

(1) A person commits an offence against this Act if the person, in the course of undertaking an activity described in subsection (2), knowingly and without lawful justification or excuse releases any hydrofluorocarbon, perfluorocarbon, or sulphur hexafluoride into the atmosphere.

(2) The activities are installing, operating, servicing, modifying, dismantling, or disposing of any electrical switchgear, refrigeration or air-conditioning equipment, or other heat-transfer medium.
(3) A person who is convicted of an offence against subsection (1) is liable on conviction,—
   (a) in the case of an individual, to a fine not exceeding $25,000:
   (b) in the case of a body corporate, to a fine not exceeding $50,000.

265 Defence for release of synthetic greenhouse gas
The circumstances in which a person described in section 264(1) may have a lawful justification or excuse for releasing any hydrofluorocarbon, perfluorocarbon, or sulphur hexafluoride into the atmosphere include (but are not limited to) circumstances where the release could not reasonably have been avoided.

Proceedings and liability

266 Limitation period for commencement of proceedings
Despite section 25 of the Criminal Procedure Act 2011, the limitation period for an offence against—
   (a) section 260 or 261(1)(a), (b), or (c) ends on the date that is 2 years from the date on which the offence was committed:
   (b) section 259 or 261(1)(c) or (d) ends on the date that is 7 years from the date on which the offence was committed.

267 Evidence in proceedings
(1) In any proceedings for an offence against this Part, a certificate or document (including an electronic copy) of any of the kinds described in subsection (2)—
   (a) is admissible in evidence; and
   (b) in the absence of proof to the contrary, is sufficient evidence of the matter stated in the certificate or the document, as the case may require.

(2) The kinds of certificate or document are—
   (a) a certificate purporting to be signed by a delegate of the EPA to the effect that, at any specified date or during any specified period, a named person is or was, or is not or was not, an enforcement officer or a person or an organisation recognised under section 251; or
   (b) a certificate purporting to be signed by any person authorised to delegate to any person, or to persons of any kind or description, the exercise of any power or the performance of any function under this Part, stating that the person has delegated—
      (i) the exercise of the power or the performance of the function specified in the certificate to the person specified in the certificate; or
      (ii) the exercise of the power or the performance of the function specified in the certificate to persons of a kind or description specified
in the certificate, and that a named person specified in the certificate is a person of that kind or description.

(3) The production of a certificate or document purporting to be a certificate to which subsection (2) applies is prima facie evidence that it is such a certificate or document, without proof of—
(a) the signature of the person purporting to have signed the document; or
(b) the document’s nature.

268 Liability of body corporate, directors, managers of companies, companies, and persons for actions of directors, agents, and employees

(1) Sections 139 and 140 apply in relation to proceedings against, or conviction of, a body corporate for an offence under this Part as if a reference to Part 4 were a reference to Part 7.

(2) Section 141 applies as if a reference to sections 132(1)(c) to (f) or 133 included a reference to section 261(1)(c) or (d) or 263.

Subpart 4—Other matters

269 Review of operation and effectiveness of levy

(1) The Minister may, at any time, initiate a review of the operation and effectiveness of the synthetic greenhouse gas levy.

(2) A review may be undertaken by any method that the Minister considers appropriate.

(3) Without limiting the Minister’s discretion under subsection (1), the Minister may appoint an independent panel—
(a) to conduct a review under subsection (1); and
(b) to report in accordance with the terms of reference.

(4) If the Minister appoints a panel, the Minister must—
(a) specify in writing the terms of reference for the review; and
(b) publish the report of the panel; and
(c) present a copy of the report to the House of Representatives.

(5) If the Minister initiates a review but does not appoint a panel, the Minister must—
(a) consult persons (or their representatives) who appear to the Minister likely to have an interest in the review; and
(b) consult representatives of iwi and Māori who appear to the Minister to be likely to have an interest in the review; and
(c) specify written terms of reference for the review; and
(d) establish a procedure that the Minister is satisfied is appropriate, fair in the circumstances, and in accordance with the terms of reference.
The Minister may, but need not, initiate a review under subsection (1) at the same time as he or she initiates a review under section 160 of the operation and effectiveness of the emissions trading scheme.

270 Appointment and conduct of independent panel

(1) If the Minister appoints an independent panel under section 269, the Minister must—
   (a) ensure that there is no fewer than 3 but not more than 7 members; and
   (b) ensure that the majority of the members are not employees under the State Sector Act 1988; and
   (c) consider whether the members have, in the Minister’s opinion, the appropriate knowledge, skill, and experience to conduct the review, including knowledge, skill, and experience of—
      (i) this Act; and
      (ii) New Zealand’s international obligations under the Protocol and the Convention and any other relevant international agreement; and
      (ii) international climate change obligations and any other relevant international agreement; and
   (iii) the operation of the synthetic greenhouse gas levy; and
   (d) appoint 1 member as the chairperson of the panel.

(2) The Minister must, by written notice to the panel, specify the terms of reference for the review to be conducted by the panel.

(3) A review panel must complete a draft report on the review and provide the report to the Minister by the date set out in the terms of reference.

(4) The review panel must—
   (a) allow the Minister at least 10 working days within which to respond to and comment on the contents of the draft report; and
   (b) after considering the Minister’s response and comments (if any), prepare a final report and provide it to the Minister by the date set out in the terms of reference.

(5) In conducting a review, the review panel—
   (a) must establish a procedure that is appropriate, fair in the circumstances, and in accordance with the terms of reference of the review; and
   (b) must consult persons (or their representatives) that appear to the panel likely to have an interest in the review; and
   (c) may call for submissions.
(6) If the Minister initiates a review under section 269(1) and a review under section 160, the Minister may appoint 1 independent panel to undertake both reviews.
Schedule 1AA

Transitional, savings, and related provisions

Part 1

Provisions relating to Climate Change Response (Zero Carbon) Amendment Act 2019

1 Appointment of first members of Commission
(1) This clause applies in respect of the appointment of the first 7 members of the Commission.
(2) The Minister may recommend to the Governor-General that a person be appointed as a member if the Minister has, either before or after the commencement of Part 1A,—
   (a) had regard to the matters in section 5H; and
   (b) consulted representatives of all other political parties in Parliament.
(3) This clause overrides section 5E.

2 Preparatory work for first national climate change risk assessment
(1) This clause applies if, before the commencement of Part 1C, the Minister takes any steps referred to in section 5ZR(1).
(2) Part 1C must be treated as if it were in force when the steps are taken.
(3) If the Minister makes a national climate change risk assessment publicly available before the commencement of Part 1C,—
   (a) the national climate change risk assessment must be treated as the first national climate change risk assessment under Part 1C; and
   (b) the Minister must present the first national adaptation plan to the House of Representatives and make it publicly available no later than 2 years after the date on which Part 1C commences.

3 Savings of targets for greenhouse gas emissions made under section 224
(1) A target for greenhouse gas emissions made under section 224 before the commencement of the Climate Change Response (Zero Carbon) Amendment Act 2019—
   (a) continues in force as if section 224 had not been repealed; and
   (b) may be amended or revoked as if section 224 had not been repealed.
(2) This clause does not apply to the target set in the Climate Change Response (2050 Emissions Target) Notice 2011 (Gazette 2011, p 987).
Schedule 1AA

Transitional, savings, and related provisions

Contents

Part 1
Provisions relating to Climate Change Response (Emissions Trading Reform) Amendment Act 2019

<table>
<thead>
<tr>
<th></th>
<th>Interpretation</th>
<th>418</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Satisfying requirements for making regulations</td>
<td>418</td>
</tr>
<tr>
<td>3</td>
<td>New regulations may commence on or after commencement of clause</td>
<td>418</td>
</tr>
<tr>
<td>4</td>
<td>Making first regulations about overall limits and price controls for units</td>
<td>418</td>
</tr>
<tr>
<td>5</td>
<td>Existing accounts continue</td>
<td>419</td>
</tr>
<tr>
<td>6</td>
<td>Deregistering participants for persistent non-compliance</td>
<td>419</td>
</tr>
<tr>
<td>7</td>
<td>Information to be published by EPA</td>
<td>419</td>
</tr>
<tr>
<td>8</td>
<td>Penalties</td>
<td>419</td>
</tr>
<tr>
<td>9</td>
<td>Consolidated group for activity relating to forestry</td>
<td>420</td>
</tr>
<tr>
<td>10</td>
<td>Pending offsetting forest land applications may be amended to include new land</td>
<td>420</td>
</tr>
<tr>
<td>11</td>
<td>Approved offsetting forest land applications may be amended to include new land</td>
<td>421</td>
</tr>
<tr>
<td>12</td>
<td>Approval of variation application</td>
<td>421</td>
</tr>
<tr>
<td>13</td>
<td>Surrender of units relating to permanent forestry</td>
<td>423</td>
</tr>
</tbody>
</table>

Tree weeds

| 16 | Existing exemptions for deforestation of land with tree weeds | 423 |
| 17 | Carbon accounting areas with tree weeds already added to post-1989 forest land | 423 |

Changing of activity on post-1989 forest land

| 18 | Previous changing of activity on post-1989 forest land | 423 |
| 19 | Application to change from standard to permanent forestry | 424 |
| 20 | Changing activity from PFSI activity prevented until 2021 | 424 |
| 21 | All PFSI activity is changed to permanent forestry in 2022 | 424 |

Carbon accounting areas (averaging)

| 22 | Emissions returns for carbon accounting area (averaging) in third mandatory emissions return period | 424 |
| 23 | Option to use averaging accounting for carbon accounting areas constituted in 2019 and 2020 | 425 |
Part 1
Provisions relating to Climate Change Response (Emissions Trading Reform) Amendment Act 2019

1 Interpretation
In this Part,—

amendment Act means the Climate Change Response Amendment Act 2019
third mandatory emissions return period means the 5-year period starting on 1 January 2018 and ending on 31 December 2022.

2 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.

3 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.

4 Making first regulations about overall 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 overall limits or price control settings as required to comply with section 30GC(2); and
(b) the Minister may recommend prescribing a new overall 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).
5 **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.

6 **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 59A if the failure on which the EPA relies occurred before the commencement of this clause.

7 **Information to be published by EPA**

(1) Section 89(1A) and (1B) does not apply in respect of failures or errors made by a person before 1 January 2021.

(2) 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.

(3) 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.

(4) Section 89A—

   (a) applies in respect of emissions returns submitted under section 189AA or 189AB 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.

8 **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.
Sections 134 to 134D, as inserted by the amendment Act, do not apply in respect of the person for the failure or error.

This Act, as in force immediately before the commencement of this clause, applies in respect of the person for the failure or error.

9 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 or 1A 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 189AA in respect of 1 or more of the activities of standard forestry 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 (2) 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.

10 Pending offsetting forest land applications may be amended to include new land

(1) This clause applies to an offsetting forest land application (an existing application) submitted under section 186A if, as at the commencement date, it has not been accepted or declined under section 186B.

(2) The applicants may, on request to the EPA, amend the application to include land of the kind referred to in section 186B(1)(a)(ii)(F), (G), or (H) as well as, or instead of, the originally proposed offsetting forest land.

(3) An application amended under this clause is to be treated as if it had originally been submitted as amended.
(4) In this clause, commencement date means the date on which this clause came into force.

11 Approved offsetting forest land applications may be amended to include new land

(1) This clause applies to an offsetting forest land application (an existing application) submitted under section 186A if—

(a) it was approved before the commencement date; but

(b) as at the commencement date, no declaration under section 186D had been submitted.

(2) The owner of pre-1990 forest land that is the subject of the existing application may apply to the EPA (a variation application) to substitute land of the kind referred to in section 186B(1)(a)(ii)(F), (G), or (H) for some or all of the offsetting forest land.

(3) The variation application must—

(a) identify the existing offsetting forest 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 186A; and

(ii) any other information prescribed in the regulations made under section 186F.

(4) The variation application must be made jointly by all of the owners of the pre-1990 forest land and the offsetting forest land under the existing application and the owner of area B.

(5) The variation application must—

(a) be signed by all of the applicants; and

(b) be submitted before the date on which the declaration under section 186D is required to be made in relation to the existing 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).

(6) In this clause, commencement date means the date on which this clause came into force.

12 Approval of variation application

(1) If a person submits an application under clause 11, 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 186B(1)(a)(ii)(F), (G), or (H); and

(b) if any of the land in area B is land that is in a carbon accounting area, all of the land in the carbon accounting area is in part of area B; and

(c) the land that will be the offsetting forest land under the existing application if the variation is approved (so excluding area A and including area B) (the revised offset land) meets the criteria in section 186B(1)(b) and (d); and

(d) the EPA is satisfied that the revised offset land is likely to meet the criteria in section 186B(1)(c)(i) and (ii); and

(e) any other criteria prescribed in regulations made under section 186F are met.

(3) If the EPA approves the application,—

(a) area A ceases to be part of the approved offset land; and

(b) area B becomes part of the approved offset land; and

(c) if area B includes any land in a carbon accounting area,—

(i) the participant for that carbon accounting area—

(A) is liable to surrender the number of New Zealand units equal to the unit balance of that carbon accounting area; and

(B) ceases to be a participant in the relevant activity on that carbon accounting area; and

(ii) the EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this paragraph; and

(d) this Act applies as if the existing application had been approved (on its original approval date) in relation to the revised offset land.

Amendment note:
This clause is proposed to be amended further on 30 November 2020 by clause 222(1) of the Climate Change Response (Emissions Trading Reform) Amendment Bill.
13 **Surrender of units relating to permanent forestry**

If, before 30 November 2020, a participant in permanent forestry becomes liable to surrender New Zealand units under a provision of this Act, the participant may satisfy that liability by surrendering—

(a) New Zealand units; or

(b) New Zealand assigned amount units (as defined by regulation 3 of the Climate Change (Unit Register) Regulations 2008); or

(c) a combination of those types of units.

*Amendment note:*

Clause 14 is proposed to be inserted on 30 November 2020 by clause 222(2) of the Climate Change Response (Emissions Trading Reform) Amendment Bill, and clause 15 is proposed to be inserted by Order in Council or on 1 January 2023 by clause 229 of the Climate Change Response (Emissions Trading Reform) Amendment Bill.

---

16 **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.

17 **Carbon accounting areas with tree weeds already added to post-1989 forest land**

Section 188(5)(b) does not affect a carbon accounting area added to any post-1989 forest land before the commencement of that provision.

*Changing of activity on post-1989 forest land*

18 **Previous changing of activity on post-1989 forest land**

(1) If a person satisfied section 188(9) before the commencement of this clause, they must be treated as having had an application under section 194DA approved to become registered as a participant in standard forestry (the final activity) by changing from PFSI activity (the initial activity).

(2) See sections 194DA(6)(b) and 194EA(2)(c)(ii) for provisions to which this clause relates.
19 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 2022,—
   (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 194DA 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.

20 Changing activity from PFSI activity prevented until 2021

A participant in an initial activity of PFSI activity cannot apply under section 194DA to change to a final activity before 1 January 2021.

21 All PFSI activity is changed to permanent forestry in 2022

(1) This clause applies to a person’s forest land that a forest sink covenant is registered against immediately before 1 January 2022 (the PFSI land).

(2) On 1 January 2022,—
   (a) the EPA must apply sections 194DA to 194DC as if the person had that day submitted an application in accordance with section 194DA 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)

22 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 194FC(3) 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 CAA1 must be made as if—
(a) 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.

23 Option to use averaging accounting for carbon accounting areas constituted in 2019 and 2020

(1) A participant in an activity of standard forestry on post-1989 forest land in 1 or more carbon accounting areas (each a **CAA1**) that are covered by subclause (2) may give notice to the EPA to change the CAA1s into carbon accounting areas (averaging).

(2) A carbon accounting area may be changed to averaging if—
   (a) it is not a carbon accounting area (averaging) under section 194FC(3); and
   (b) its constitution date is after 31 December 2018 but before 1 January 2021; and
   (c) it meets the requirements of section 194FC(3)(b); and
   (d) before the notice is given under this clause, no other emissions return has been (or should have been) submitted covering the carbon accounting area in relation to a period after 1 January 2023.

(3) The notice must—
   (a) specify the CAA1s to which it relates; and
   (b) include an emissions return prepared under clause 24 for the activity that covers the CAA1s.

(4) 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).

24 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 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 CAA1 (whether they occurred when the land was part of CAA1 or part of a predecessor CAA); and
   (iv) set out the calculation under clause 25(1) of the person’s averaging liability or entitlement for emissions and removals during the emissions return period; and
   (v) set out the calculation under clause 25(2) of the averaging unit balance; and
   (vi) set out the calculation under clause 25(4) of the person’s actual liability or entitlement; and

(c) set out the calculation under clause 25(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.

25 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 (3)

e is the number of units required for the emissions from the CAA1 during the emissions return period, determined in accordance with subclause (3).

(2) The averaging unit balance of a CAA1 (u) is calculated as follows:

   \[ u = h + a \]
where—

\[ h \text{ is the opening unit balance of the CAA1 determined in accordance with subclause (3)} \]

\[ a \text{ is the person’s averaging liability or entitlement for the CAA1.} \]

(3) The values of variables \( r, e, \) and \( h \) in subclauses (1) and (2) 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 in force before the beginning of the emissions return period.

(4) A person’s **actual liability or entitlement** for a CAA1 (\( h \)) is calculated as follows:

\[ h = a - c \]

where—

\[ a \text{ is the averaging unit balance of the CAA1 under subclause (3)} \]

\[ c \text{ is—} \]

(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—

\[ h_n \text{ is the sum of the person’s actual liability or entitlement for each CAA1.} \]

26 **Effect of changing to carbon accounting areas (averaging)**

(1) This clause applies if the EPA decides that a notice under clause 23 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 New Zealand 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 done so on 1 January 2023.

(5) The person is not required to submit an emissions return under section 189AB covering the CAA1s covered by the notice.

(6) For the purpose of future calculations in relation to the CAA1s, the emissions return accompanying the notice is a final forestry emissions return.

Amendment note:
This clause is proposed to be amended further on 30 November 2020 by clause 222(3) of the Climate Change Response (Emissions Trading Reform) Amendment Bill.
Schedule 1
United Nations Framework Convention on Climate Change

(This table of contents is not part of the Convention.)

<table>
<thead>
<tr>
<th>Article No</th>
<th>Article</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Definitions</td>
</tr>
<tr>
<td>2</td>
<td>Objective</td>
</tr>
<tr>
<td>3</td>
<td>Principles</td>
</tr>
<tr>
<td>4</td>
<td>Commitments</td>
</tr>
<tr>
<td>5</td>
<td>Research and systematic observation</td>
</tr>
<tr>
<td>6</td>
<td>Education, training and public awareness</td>
</tr>
<tr>
<td>7</td>
<td>Conference of the parties</td>
</tr>
<tr>
<td>8</td>
<td>Secretariat</td>
</tr>
<tr>
<td>9</td>
<td>Subsidiary body for scientific and technological advice</td>
</tr>
<tr>
<td>10</td>
<td>Subsidiary body for implementation</td>
</tr>
<tr>
<td>11</td>
<td>Financial mechanism</td>
</tr>
<tr>
<td>12</td>
<td>Communication of information related to implementation</td>
</tr>
<tr>
<td>13</td>
<td>Resolution of questions regarding implementation</td>
</tr>
<tr>
<td>14</td>
<td>Settlement of disputes</td>
</tr>
<tr>
<td>15</td>
<td>Amendments to the Convention</td>
</tr>
<tr>
<td>16</td>
<td>Adoption and amendment of annexes to the Convention</td>
</tr>
<tr>
<td>17</td>
<td>Protocols</td>
</tr>
<tr>
<td>18</td>
<td>Right to vote</td>
</tr>
<tr>
<td>19</td>
<td>Depositary</td>
</tr>
<tr>
<td>20</td>
<td>Signature</td>
</tr>
<tr>
<td>21</td>
<td>Interim arrangements</td>
</tr>
<tr>
<td>22</td>
<td>Ratification, acceptance, approval or accession</td>
</tr>
<tr>
<td>23</td>
<td>Entry into force</td>
</tr>
<tr>
<td>24</td>
<td>Reservations</td>
</tr>
<tr>
<td>25</td>
<td>Withdrawal</td>
</tr>
<tr>
<td>26</td>
<td>Authentic texts</td>
</tr>
</tbody>
</table>

Annex I

Annex II
The Parties to this Convention,

Acknowledging that change in the Earth’s climate and its adverse effects are a common concern of humankind,

Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth’s surface and atmosphere and may adversely affect natural ecosystems and humankind,

Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof,

Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972,

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

Recalling also the provisions of General Assembly resolution 44/206 of 22 December 1989 on the possible adverse effects of sea-level rise on islands and coastal areas, particularly low-lying coastal areas and the pertinent provisions of General Assembly resolution 44/172 of 19 December 1989 on the implementation of the Plan of Action to Combat Desertification,

Recalling further the Vienna Convention for the Protection of the Ozone Layer, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June 1990,

Noting the Ministerial Declaration of the Second World Climate Conference adopted on 7 November 1990,

Conscious of the valuable analytical work being conducted by many States on climate change and of the important contributions of the World Meteorological Organization, the United Nations Environment Programme and other organs, organizations and bodies of the United Nations system, as well as other international and intergovernmental bodies, to the exchange of results of scientific research and the coordination of research,

Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all greenhouse gases, with due consideration of their relative contributions to the enhancement of the greenhouse effect,

Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change,

Recognizing the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use and exportation, as a consequence of action taken on limiting greenhouse gas emissions,

Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,

Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consump-
tion will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

Determined to protect the climate system for present and future generations,

Have agreed as follows:

**Article 1**

**Definitions**

For the purposes of this Convention:

1. “Adverse effects of climate change” means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.

2. “Climate change” means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

3. “Climate system” means the totality of the atmosphere, hydrosphere, biosphere and geosphere.

4. “Emissions” means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.

5. “Greenhouse gases” means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.

6. “Regional economic integration organization” means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.

7. “Reservoir” means a component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored.

8. “Sink” means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.

9. “Source” means any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere.

---

1 Titles of articles are included solely to assist the reader.
Article 2
Objective
The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

Article 3
Principles
In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.
5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

**Article 4**

**Commitments**

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

   (a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;

   (b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

   (c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;

   (d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;

   (e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;

   (f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and
actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;

(g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;

(h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;

(i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and

(j) Communicate to the Conference of the Parties information related to implementation, in accordance with Article 12.

2. The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties’ starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures

---

2 This includes policies and measures adopted by regional economic integration organizations.
jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

(b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

(c) Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of subparagraph (b) above should take into account the best available scientific knowledge, including of the effective capacity of sinks and the respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter;

(d) The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above. The Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in subparagraph (a) above. A second review of subparagraphs (a) and (b) shall take place not later than 31 December 1998, and thereafter at regular intervals determined by the Conference of the Parties, until the objective of the Convention is met;

(e) Each of these Parties shall:

(i) Coordinate as appropriate with other such Parties, relevant economic and administrative instruments developed to achieve the objective of the Convention; and

(ii) Identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol than would otherwise occur;
(f) The Conference of the Parties shall review, not later than 31 December 1998, available information with a view to taking decisions regarding such amendments to the lists in Annexes I and II as may be appropriate, with the approval of the Party concerned;

(g) Any Party not included in Annex I may, in its instrument of ratification, acceptance, approval or accession, or at any time thereafter, notify the Depositary that it intends to be bound by subparagraphs (a) and (b) above. The Depositary shall inform the other signatories and Parties of any such notification.

3. The developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.

4. The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.

5. The developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.

6. In the implementation of their commitments under paragraph 2 above, a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in Annex I undergoing the process of transition to a market economy, in order to enhance the ability of these Parties to address climate change, including with regard to the historical level of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol chosen as a reference.

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementa-
tion by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

8. In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:

(a) Small island countries;
(b) Countries with low-lying coastal areas;
(c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;
(d) Countries with areas prone to natural disasters;
(e) Countries with areas liable to drought and desertification;
(f) Countries with areas of high urban atmospheric pollution;
(g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
(h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and
(i) Land-locked and transit countries.

Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.

9. The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.

10. The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.
Article 5
Research and systematic observation
In carrying out their commitments under Article 4, paragraph 1(g), the Parties shall:
(a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort;
(b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and
(c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

Article 6
Education, training and public awareness
In carrying out their commitments under Article 4, paragraph 1(i), the Parties shall:
(a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:
(i) The development and implementation of educational and public awareness programmes on climate change and its effects;
(ii) Public access to information on climate change and its effects;
(iii) Public participation in addressing climate change and its effects and developing adequate responses; and
(iv) Training of scientific, technical and managerial personnel.
(b) Cooperate in and promote, at the international level, and, where appropriate, using existing bodies:
(i) The development and exchange of educational and public awareness material on climate change and its effects; and
(ii) The development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to train experts in this field, in particular for developing countries.
Article 7
Conference of the parties

1. A Conference of the Parties is hereby established.

2. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To this end, it shall:

(a) Periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;

(b) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;

(c) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;

(d) Promote and guide, in accordance with the objective and provisions of the Convention, the development and periodic refinement of comparable methodologies, to be agreed on by the Conference of the Parties, inter alia, for preparing inventories of greenhouse gas emissions by sources and removals by sinks, and for evaluating the effectiveness of measures to limit the emissions and enhance the removals of these gases;

(e) Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the Parties, the overall effects of the measures taken pursuant to the Convention, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;

(f) Consider and adopt regular reports on the implementation of the Convention and ensure their publication;

(g) Make recommendations on any matters necessary for the implementation of the Convention;

(h) Seek to mobilize financial resources in accordance with Article 4, paragraphs 3, 4 and 5, and Article 11;

(i) Establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;
(j) Review reports submitted by its subsidiary bodies and provide guidance to them;

(k) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and for any subsidiary bodies;

(l) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and

(m) Exercise such other functions as are required for the achievement of the objective of the Convention as well as all other functions assigned to it under the Convention.

3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure as well as those of the subsidiary bodies established by the Convention, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.

4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in Article 21 and shall take place not later than one year after the date of entry into force of the Convention. Thereafter, ordinary sessions of the Conference of the Parties shall be held every year unless otherwise decided by the Conference of the Parties.

5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, 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.

6. The United Nations, 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 as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties 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 adopted by the Conference of the Parties.

Article 8
Secretariat

1. A secretariat is hereby established.

2. The functions of the secretariat shall be:
(a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;

(b) To compile and transmit reports submitted to it;

(c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

(d) To prepare reports on its activities and present them to the Conference of the Parties;

(e) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(g) To perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.

3. The Conference of the Parties, at its first session, shall designate a permanent secretariat and make arrangements for its functioning.

Article 9

Subsidiary body for scientific and technological advice

1. A subsidiary body for scientific and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on scientific and technological matters relating to the Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, and drawing upon existing competent international bodies, this body shall:
   (a) Provide assessments of the state of scientific knowledge relating to climate change and its effects;
   (b) Prepare scientific assessments on the effects of measures taken in the implementation of the Convention;
   (c) Identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting development and/or transferring such technologies;
   (d) Provide advice on scientific programmes, international cooperation in research and development related to climate change, as well as on ways
and means of supporting endogenous capacity-building in developing countries; and

(c) Respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions and terms of reference of this body may be further elaborated by the Conference of the Parties.

**Article 10**

**Subsidiary body for implementation**

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. This body shall be open to participation by all Parties and comprise government representatives who are experts on matters related to climate change. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, this body shall:

(a) Consider the information communicated in accordance with Article 12, paragraph 1, to assess the overall aggregated effect of the steps taken by the Parties in the light of the latest scientific assessments concerning climate change;

(b) Consider the information communicated in accordance with Article 12, paragraph 2, in order to assist the Conference of the Parties in carrying out the reviews required by Article 4, paragraph 2(d); and

(c) Assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

**Article 11**

**Financial mechanism**

1. A mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology, is hereby defined. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this Convention. Its operation shall be entrusted to one or more existing international entities.

2. The financial mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance.

3. The Conference of the Parties and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:
Modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties;

(b) Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities and eligibility criteria;

(c) Provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above; and

(d) Determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.

4. The Conference of the Parties shall make arrangements to implement the above-mentioned provisions at its first session, reviewing and taking into account the interim arrangements referred to in Article 21, paragraph 3, and shall decide whether these interim arrangements shall be maintained. Within four years thereafter, the Conference of the Parties shall review the financial mechanism and take appropriate measures.

5. The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.

Article 12

Communication of information related to implementation

1. In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:

(a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;

(b) A general description of steps taken or envisaged by the Party to implement the Convention; and

(c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.

2. Each developed country Party and each other Party included in Annex I shall incorporate in its communication the following elements of information:
(a) A detailed description of the policies and measures that it has adopted to implement its commitment under Article 4, paragraphs 2(a) and 2(b); and

(b) A specific estimate of the effects that the policies and measures referred to in subparagraph (a) immediately above will have on anthropogenic emissions by its sources and removals by its sinks of greenhouse gases during the period referred to in Article 4, paragraph 2(a).

3. In addition, each developed country Party and each other developed Party included in Annex II shall incorporate details of measures taken in accordance with Article 4, paragraphs 3, 4 and 5.

4. Developing country Parties may, on a voluntary basis, propose projects for financing, including specific technologies, materials, equipment, techniques or practices that would be needed to implement such projects, along with, if possible, an estimate of all incremental costs, of the reductions of emissions and increments of removals of greenhouse gases, as well as an estimate of the consequent benefits.

5. Each developed country Party and each other Party included in Annex I shall make its initial communication within six months of the entry into force of the Convention for that Party. Each Party not so listed shall make its initial communication within three years of the entry into force of the Convention for that Party, or of the availability of financial resources in accordance with Article 4, paragraph 3. Parties that are least developed countries may make their initial communication at their discretion. The frequency of subsequent communications by all Parties shall be determined by the Conference of the Parties, taking into account the differentiated timetable set by this paragraph.

6. Information communicated by Parties under this Article shall be transmitted by the secretariat as soon as possible to the Conference of the Parties and to any subsidiary bodies concerned. If necessary, the procedures for the communication of information may be further considered by the Conference of the Parties.

7. From its first session, the Conference of the Parties shall arrange for the provision to developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article, as well as in identifying the technical and financial needs associated with proposed projects and response measures under Article 4. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.

8. Any group of Parties may, subject to guidelines adopted by the Conference of the Parties, and to prior notification to the Conference of the Parties, make a joint communication in fulfilment of their obligations under this Article, provided that such a communication includes information on the fulfilment by each of these Parties of its individual obligations under the Convention.
9. Information received by the secretariat that is designated by a Party as confidential, in accordance with criteria to be established by the Conference of the Parties, shall be aggregated by the secretariat to protect its confidentiality before being made available to any of the bodies involved in the communication and review of information.

10. Subject to paragraph 9 above, and without prejudice to the ability of any Party to make public its communication at any time, the secretariat shall make communications by Parties under this Article publicly available at the time they are submitted to the Conference of the Parties.

**Article 13**

**Resolution of questions regarding implementation**

The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.

**Article 14**

**Settlement of disputes**

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation:
   
   (a) Submission of the dispute to the International Court of Justice, and/or
   
   (b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

   A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute otherwise agree.
5. Subject to the operation of paragraph 2 above, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a recommendatory award, which the parties shall consider in good faith.

7. Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.

8. The provisions of this Article shall apply to any related legal instrument which the Conference of the Parties may adopt, unless the instrument provides otherwise.

**Article 15**

**Amendments to the Convention**

1. Any Party may propose amendments to the Convention.

2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to the Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to the Convention.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

6. For the purposes of this Article, “Parties present and voting” means Parties present and casting an affirmative or negative vote.
Article 16

Adoption and amendment of annexes to the Convention

1. Annexes to the Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto. Without prejudice to the provisions of Article 14, paragraphs 2(b) and 7, 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.

2. Annexes to the Convention shall be proposed and adopted in accordance with the procedure set forth in Article 15, paragraphs 2, 3 and 4.

3. An annex that has been adopted in accordance with paragraph 2 above shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex. The annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

4. The proposal, adoption and entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the proposal, adoption and entry into force of annexes to the Convention in accordance with paragraphs 2 and 3 above.

5. If the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amendment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.

Article 17

Protocols

1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention.

2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.

3. The requirements for the entry into force of any protocol shall be established by that instrument.

4. Only Parties to the Convention may be Parties to a protocol.

5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.
Article 18
Right to vote

1. Each Party to the Convention shall have one vote, except as provided for in paragraph 2 below.

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 the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 19
Depositary

The Secretary-General of the United Nations shall be the Depositary of the Convention and of protocols adopted in accordance with Article 17.

Article 20
Signature

This Convention shall be open for signature by States Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations at Rio de Janeiro, during the United Nations Conference on Environment and Development, and thereafter at United Nations Headquarters in New York from 20 June 1992 to 19 June 1993.

Article 21
Interim arrangements

1. The secretariat functions referred to in Article 8 will be carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 45/212 of 21 December 1990, until the completion of the first session of the Conference of the Parties.

2. The head of the interim secretariat referred to in paragraph 1 above will cooperate closely with the Intergovernmental Panel on Climate Change to ensure that the Panel can respond to the need for objective scientific and technical advice. Other relevant scientific bodies could also be consulted.

3. The Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the international entity entrusted with the operation of the financial mechanism referred to in Article 11 on an interim basis. In this connection, the Global Environment Facility
should be appropriately restructured and its membership made universal to enable it to fulfil the requirements of Article 11.

Article 22
Ratification, acceptance, approval or accession
1. The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization which becomes a Party to the Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention 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 the Convention. 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 23
Entry into force
1. The Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.
Article 24
Reservations
No reservations may be made to the Convention.

Article 25
Withdrawal
1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention 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 any protocol to which it is a Party.

Article 26
Authentic texts
The original of this Convention, 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.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at New York this ninth day of May one thousand nine hundred and ninety-two.
Annex I

Australia
Austria
Belarus
Belgium
Bulgaria
Canada
Croatia
Czech Republic
Denmark
European Economic Community
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Italy
Japan
Latvia
Liechtenstein
Lithuania
Luxembourg
Monaco
Netherlands
New Zealand
Norway
Poland
Portugal
Romania
Russian Federation
Slovakia

452
Climate Change Response Act 2002
Unofficial version showing amendments proposed by
Climate Change Response (Emissions Trading Reform)
Amendment Bill (as introduced)

Schedule 1

Slovenia*  
Spain  
Sweden  
Switzerland  
Turkey  
Ukraine*  
United Kingdom of Great Britain and Northern Ireland  
United States of America  

* Countries that are undergoing the process of transition to a market economy.  
* Countries added to Annex I by an amendment that entered into force on 13 August 1998 pursuant to decision 4/CP.3 adopted at COP 3.
Annex II

Australia
Austria
Belgium
Canada
Denmark
European Economic Community
Finland
France
Germany
Greece
Iceland
Ireland
Italy
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America
Schedule 2

Kyoto Protocol to the United Nations Framework Convention on Climate Change

The Parties to this Protocol,

Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as “the Convention”,

In pursuit of the ultimate objective of the Convention as stated in its Article 2,

Recalling the provisions of the Convention,

Being guided by Article 3 of the Convention,

Pursuant to the Berlin Mandate adopted by decision 1/CP.1 of the Conference of the Parties to the Convention at its first session,

Have agreed as follows:

Article 1

For the purposes of this Protocol, the definitions contained in Article 1 of the Convention shall apply. In addition:

1. “Conference of the Parties” means the Conference of the Parties to the Convention.


5. “Parties present and voting” means Parties present and casting an affirmative or negative vote.

6. “Party” means, unless the context otherwise indicates, a Party to this Protocol.

7. “Party included in Annex I” means a Party included in Annex I to the Convention, as may be amended, or a Party which has made a notification under Article 4, paragraph 2(g), of the Convention.

Article 2

1. Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:
(a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:

(i) Enhancement of energy efficiency in relevant sectors of the national economy;

(ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;

(iii) Promotion of sustainable forms of agriculture in light of climate change considerations;

(iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;

(v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;

(vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;

(vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;

(viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;

(b) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this Article, pursuant to Article 4, paragraph 2(e)(i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, consider ways to facilitate such cooperation, taking into account all relevant information.

2. The Parties included in Annex I shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively.
3. The Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol, if it decides that it would be beneficial to coordinate any of the policies and measures in paragraph 1(a) above, taking into account different national circumstances and potential effects, shall consider ways and means to elaborate the coordination of such policies and measures.

**Article 3**

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

2. Each Party included in Annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol.

3. The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I. The greenhouse gas emissions by sources and removals by sinks associated with those activities shall be reported in a transparent and verifiable manner and reviewed in accordance with Articles 7 and 8.

4. Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party included in Annex I shall provide, for consideration by the Subsidiary Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be
added to, or subtracted from, the assigned amounts for Parties included in Annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with Article 5 and the decisions of the Conference of the Parties. Such a decision shall apply in the second and subsequent commitment periods. A Party may choose to apply such a decision on these additional human-induced activities for its first commitment period, provided that these activities have taken place since 1990.

5. The Parties included in Annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to decision 9/CP.2 of the Conference of the Parties at its second session shall use that base year or period for the implementation of their commitments under this Article. Any other Party included in Annex I undergoing the process of transition to a market economy which has not yet submitted its first national communication under Article 12 of the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this Article. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall decide on the acceptance of such notification.

6. Taking into account Article 4, paragraph 6, of the Convention, in the implementation of their commitments under this Protocol other than those under this Article, a certain degree of flexibility shall be allowed by the Conference of the Parties serving as the meeting of the Parties to this Protocol to the Parties included in Annex I undergoing the process of transition to a market economy.

7. In the first quantified emission limitation and reduction commitment period, from 2008 to 2012, the assigned amount for each Party included in Annex I shall be equal to the percentage inscribed for it in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by five. Those Parties included in Annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.

8. Any Party included in Annex I may use 1995 as its base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, for the purposes of the calculation referred to in paragraph 7 above.

9. Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol, which shall be adopted in accordance with the provisions of Article 21, paragraph 7. The Conference
of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least seven years before the end of the first commitment period referred to in paragraph 1 above.

10. Any emission reduction units, or any part of an assigned amount, which a Party acquires from another Party in accordance with the provisions of Article 6 or of Article 17 shall be added to the assigned amount for the acquiring Party.

11. Any emission reduction units, or any part of an assigned amount, which a Party transfers to another Party in accordance with the provisions of Article 6 or of Article 17 shall be subtracted from the assigned amount for the transferring Party.

12. Any certified emission reductions which a Party acquires from another Party in accordance with the provisions of Article 12 shall be added to the assigned amount for the acquiring Party.

13. If the emissions of a Party included in Annex I in a commitment period are less than its assigned amount under this Article, this difference shall, on request of that Party, be added to the assigned amount for that Party for subsequent commitment periods.

14. Each Party included in Annex I shall strive to implement the commitments mentioned in paragraph 1 above in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particularly those identified in Article 4, paragraphs 8 and 9, of the Convention. In line with relevant decisions of the Conference of the Parties on the implementation of those paragraphs, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, consider what actions are necessary to minimize the adverse effects of climate change and/or the impacts of response measures on Parties referred to in those paragraphs. Among the issues to be considered shall be the establishment of funding, insurance and transfer of technology.

Article 4

1. Any Parties included in Annex I that have reached an agreement to fulfil their commitments under Article 3 jointly, shall be deemed to have met those commitments provided that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of Article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.

2. The Parties to any such agreement shall notify the secretariat of the terms of the agreement on the date of deposit of their instruments of ratification, acceptance or approval of this Protocol, or accession thereto. The secretariat shall in
turn inform the Parties and signatories to the Convention of the terms of the agreement.

3. Any such agreement shall remain in operation for the duration of the commitment period specified in Article 3, paragraph 7.

4. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization, any alteration in the composition of the organization after adoption of this Protocol shall not affect existing commitments under this Protocol. Any alteration in the composition of the organization shall only apply for the purposes of those commitments under Article 3 that are adopted subsequent to that alteration.

5. In the event of failure by the Parties to such an agreement to achieve their total combined level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement.

6. 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 Protocol, each member State of that regional economic integration organization individually, and together with the regional economic integration organization acting in accordance with Article 24, shall, in the event of failure to achieve the total combined level of emission reductions, be responsible for its level of emissions as notified in accordance with this Article.

Article 5

1. Each Party included in Annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session.

2. Methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only
for the purposes of ascertaining compliance with commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

3. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in Annex A shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to a global warming potential shall apply only to commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

**Article 6**

1. For the purpose of meeting its commitments under Article 3, any Party included in Annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, provided that:
   (a) Any such project has the approval of the Parties involved;
   (b) Any such project provides a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur;
   (c) It does not acquire any emission reduction units if it is not in compliance with its obligations under Articles 5 and 7; and
   (d) The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under Article 3.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol may, at its first session or as soon as practicable thereafter, further elaborate guidelines for the implementation of this Article, including for verification and reporting.

3. A Party included in Annex I may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition under this Article of emission reduction units.

4. If a question of implementation by a Party included in Annex I of the requirements referred to in this Article is identified in accordance with the relevant provisions of Article 8, transfers and acquisitions of emission reduction units may continue to be made after the question has been identified, provided that
any such units may not be used by a Party to meet its commitments under Article 3 until any issue of compliance is resolved.

**Article 7**

1. Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.

2. Each Party included in Annex I shall incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.

3. Each Party included in Annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this Article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this Article, taking into account guidelines for the preparation of national communications by Parties included in Annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall also, prior to the first commitment period, decide upon modalities for the accounting of assigned amounts.

**Article 8**

1. The information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under Article 7, paragraph 1, by each Party included in Annex I shall be reviewed as
part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under Article 7, paragraph 2, by each Party included in Annex I shall be reviewed as part of the review of communications.

2. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the Conference of the Parties.

3. The review process shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol. The expert review teams shall prepare a report to the Conference of the Parties serving as the meeting of the Parties to this Protocol, assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments. Such reports shall be circulated by the secretariat to all Parties to the Convention. The secretariat shall list those questions of implementation indicated in such reports for further consideration by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the review of implementation of this Protocol by expert review teams taking into account the relevant decisions of the Conference of the Parties.

5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, with the assistance of the Subsidiary Body for Implementation and, as appropriate, the Subsidiary Body for Scientific and Technological Advice, consider:
   (a) The information submitted by Parties under Article 7 and the reports of the expert reviews thereon conducted under this Article; and
   (b) Those questions of implementation listed by the secretariat under paragraph 3 above, as well as any questions raised by Parties.

6. Pursuant to its consideration of the information referred to in paragraph 5 above, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take decisions on any matter required for the implementation of this Protocol.

**Article 9**

1. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information. Such reviews shall be coordinated with pertinent reviews under the Convention, in particular those
required by Article 4, paragraph 2(d), and Article 7, paragraph 2(a), of the Convention. Based on these reviews, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take appropriate action.

2. The first review shall take place at the second session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Further reviews shall take place at regular intervals and in a timely manner.

Article 10

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

(a) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consistent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:

(i) Such programmes would, inter alia, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change; and

(ii) Parties included in Annex I shall submit information on action under this Protocol, including national programmes, in accordance with Article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity building and adaptation measures;

(c) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound
technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;

(d) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention;

(e) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to, information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account Article 5 of the Convention;

(f) Include in their national communications information on programmes and activities undertaken pursuant to this Article in accordance with relevant decisions of the Conference of the Parties; and

(g) Give full consideration, in implementing the commitments under this Article, to Article 4, paragraph 8, of the Convention.

Article 11

1. In the implementation of Article 10, Parties shall take into account the provisions of Article 4, paragraphs 4, 5, 7, 8 and 9, of the Convention.

2. In the context of the implementation of Article 4, paragraph 1, of the Convention, in accordance with the provisions of Article 4, paragraph 3, and Article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in Annex II to the Convention shall:

(a) Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under Article 4, paragraph 1(a), of the Convention that are covered in Article 10, subparagraph (a); and
(b) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of advancing the implementation of existing commitments under Article 4, paragraph 1, of the Convention that are covered by Article 10 and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention, in accordance with that Article.

The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply mutatis mutandis to the provisions of this paragraph.

3. The developed country Parties and other developed Parties in Annex II to the Convention may also provide, and developing country Parties avail themselves of, financial resources for the implementation of Article 10, through bilateral, regional and other multilateral channels.

**Article 12**

1. A clean development mechanism is hereby defined.
2. The purpose of the clean development mechanism shall be to assist Parties not included in Annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation and reduction commitments under Article 3.
3. Under the clean development mechanism:
   (a) Parties not included in Annex I will benefit from project activities resulting in certified emission reductions; and
   (b) Parties included in Annex I may use the certified emission reductions accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under Article 3, as determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
4. The clean development mechanism shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Protocol and be supervised by an executive board of the clean development mechanism.
5. Emission reductions resulting from each project activity shall be certified by operational entities to be designated by the Conference of the Parties serving as the meeting of the Parties to this Protocol, on the basis of:
(a) Voluntary participation approved by each Party involved;
(b) Real, measurable, and long-term benefits related to the mitigation of climate change; and
(c) Reductions in emissions that are additional to any that would occur in the absence of the certified project activity.

6. The clean development mechanism shall assist in arranging funding of certified project activities as necessary.

7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, elaborate modalities and procedures with the objective of ensuring transparency, efficiency and accountability through independent auditing and verification of project activities.

8. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from certified project activities 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.

9. Participation under the clean development mechanism, including in activities mentioned in paragraph 3(a) above and in the acquisition of certified emission reductions, may involve private and/or public entities, and is to be subject to whatever guidance may be provided by the executive board of the clean development mechanism.

10. Certified emission reductions obtained during the period from the year 2000 up to the beginning of the first commitment period can be used to assist in achieving compliance in the first commitment period.

**Article 13**

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol 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 Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, 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 Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its
effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

(a) Assess, on the basis of all information made available to it in accordance with the provisions of this Protocol, the implementation of this Protocol by the Parties, the overall effects of the measures taken pursuant to this Protocol, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;

(b) Periodically examine the obligations of the Parties under this Protocol, giving due consideration to any reviews required by Article 4, paragraph 2(d), and Article 7, paragraph 2, of the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge, and in this respect consider and adopt regular reports on the implementation of this Protocol;

(c) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(d) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(e) Promote and guide, in accordance with the objective of the Convention and the provisions of this Protocol, and taking fully into account the relevant decisions by the Conference of the Parties, the development and periodic refinement of comparable methodologies for the effective implementation of this Protocol, to be agreed on by the Conference of the Parties serving as the meeting of the Parties to this Protocol;

(f) Make recommendations on any matters necessary for the implementation of this Protocol;

(g) Seek to mobilize additional financial resources in accordance with Article 11, paragraph 2;

(h) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(i) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and

(j) Exercise such other functions as may be required for the implementation of this Protocol, and consider any assignment resulting from a decision by the Conference of the Parties.
5. The rules of procedure of the Conference of the Parties and financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol 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 the entry into force of this Protocol. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held every year and 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 Protocol.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol 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 Protocol, 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, 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 Protocol as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Protocol 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 Protocol 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, as referred to in paragraph 5 above.

**Article 14**

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Protocol.

2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.

**Article 15**

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Conven-
tion shall serve as, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol. The provisions relating to the functioning of these two bodies under the Convention shall apply *mutatis mutandis* to this Protocol. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol 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 Protocol may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Protocol, any member of the Bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

**Article 16**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, as soon as practicable, consider the application to this Protocol of, and modify as appropriate, the multilateral consultative process referred to in Article 13 of the Convention, in the light of any relevant decisions that may be taken by the Conference of the Parties. Any multilateral consultative process that may be applied to this Protocol shall operate without prejudice to the procedures and mechanisms established in accordance with Article 18.

**Article 17**

The Conference of the Parties shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading. The Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments under Article 3. Any such trading shall be supplemental to domestic actions for the purpose of meeting quantified emission limitation and reduction commitments under that Article.

**Article 18**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences,
taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol.

**Article 19**

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Protocol.

**Article 20**

1. Any Party may propose amendments to this Protocol.
2. Amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed amendments to the Parties and signatories to the Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.
5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

**Article 21**

1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.
2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.
3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary.

4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or amendment to an annex other than Annex A or B, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.

7. Amendments to Annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set out in Article 20, provided that any amendment to Annex B shall be adopted only with the written consent of the Party concerned.

Article 22

1. Each Party shall have one vote, except as provided for in paragraph 2 below.

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 Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.
Article 23
The Secretary-General of the United Nations shall be the Depositary of this Protocol.

Article 24
1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after 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 which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. In the case of such organizations, one or more of whose member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol 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 Protocol. 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 25
1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.
2. For the purposes of this Article, “the total carbon dioxide emissions for 1990 of the Parties included in Annex I” means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex I in their first national communications submitted in accordance with Article 12 of the Convention.
3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.
4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

**Article 26**

No reservations may be made to this Protocol.

**Article 27**

1. At any time after three years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol 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 Protocol.

**Article 28**

The original of this Protocol, 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 Kyoto this eleventh day of December one thousand nine hundred and ninety-seven.

**IN WITNESS WHEREOF** the undersigned, being duly authorized to that effect, have affixed their signatures to this Protocol on the dates indicated.
Annex A

**Greenhouse gases**
Carbon dioxide (CO$_2$)
Methane (CH$_4$)
Nitrous oxide (N$_2$O)
Hydrofluorocarbons (HFCs)
Perfluorocarbons (PFCs)
Sulphur hexafluoride (SF$_6$)

**Sectors/source categories**

**Energy**
- Fuel combustion
  - Energy industries
  - Manufacturing industries and construction
  - Transport
  - Other sectors
  - Other
- Fugitive emissions from fuels
  - Solid fuels
  - Oil and natural gas
  - Other

**Industrial processes**
- Mineral products
- Chemical industry
- Metal production
- Other production
- Production of halocarbons and sulphur hexafluoride
- Consumption of halocarbons and sulphur hexafluoride
- Other

**Solvent and other product use**

**Agriculture**
- Enteric fermentation
- Manure management
- Rice cultivation
- Agricultural soils
<table>
<thead>
<tr>
<th>Schedule 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prescribed burning of savannas</td>
</tr>
<tr>
<td>Field burning of agricultural residues</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Waste</td>
</tr>
<tr>
<td>Solid waste disposal on land</td>
</tr>
<tr>
<td>Wastewater handling</td>
</tr>
<tr>
<td>Waste incineration</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>
## Annex B

**Quantified emission limitation or reduction commitment** (percentage of base year or period)

<table>
<thead>
<tr>
<th>Party</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>108</td>
</tr>
<tr>
<td>Austria</td>
<td>92</td>
</tr>
<tr>
<td>Belgium</td>
<td>92</td>
</tr>
<tr>
<td>Bulgaria*</td>
<td>92</td>
</tr>
<tr>
<td>Canada</td>
<td>94</td>
</tr>
<tr>
<td>Croatia*</td>
<td>95</td>
</tr>
<tr>
<td>Czech Republic*</td>
<td>92</td>
</tr>
<tr>
<td>Denmark</td>
<td>92</td>
</tr>
<tr>
<td>Estonia*</td>
<td>92</td>
</tr>
<tr>
<td>European Community</td>
<td>92</td>
</tr>
<tr>
<td>Finland</td>
<td>92</td>
</tr>
<tr>
<td>France</td>
<td>92</td>
</tr>
<tr>
<td>Germany</td>
<td>92</td>
</tr>
<tr>
<td>Greece</td>
<td>92</td>
</tr>
<tr>
<td>Hungary*</td>
<td>94</td>
</tr>
<tr>
<td>Iceland</td>
<td>110</td>
</tr>
<tr>
<td>Ireland</td>
<td>92</td>
</tr>
<tr>
<td>Italy</td>
<td>92</td>
</tr>
<tr>
<td>Japan</td>
<td>94</td>
</tr>
<tr>
<td>Latvia*</td>
<td>92</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>92</td>
</tr>
<tr>
<td>Lithuania*</td>
<td>92</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>92</td>
</tr>
<tr>
<td>Monaco</td>
<td>92</td>
</tr>
<tr>
<td>Netherlands</td>
<td>92</td>
</tr>
<tr>
<td>New Zealand</td>
<td>100</td>
</tr>
<tr>
<td>Norway</td>
<td>101</td>
</tr>
<tr>
<td>Norway*</td>
<td>94</td>
</tr>
<tr>
<td>Portugal</td>
<td>92</td>
</tr>
<tr>
<td>Romania*</td>
<td>92</td>
</tr>
<tr>
<td>Russian Federation*</td>
<td>100</td>
</tr>
<tr>
<td>Slovakia*</td>
<td>92</td>
</tr>
<tr>
<td>Slovenia*</td>
<td>92</td>
</tr>
<tr>
<td>Spain</td>
<td>92</td>
</tr>
<tr>
<td>Party</td>
<td>Quantified emission limitation or reduction commitment (percentage of base year or period)</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Sweden</td>
<td>92</td>
</tr>
<tr>
<td>Switzerland</td>
<td>92</td>
</tr>
<tr>
<td>Ukraine*</td>
<td>100</td>
</tr>
<tr>
<td>United Kingdom of Great Britain and Northern Ireland</td>
<td>92</td>
</tr>
<tr>
<td>United States of America</td>
<td>93</td>
</tr>
</tbody>
</table>

* Countries that are undergoing the process of transition to a market economy.
Schedule 2A
Paris Agreement

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:


(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-
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 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 compe-
   tence, 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 exer-
   cises its right, and vice versa.

Article 26
The Secretary-General of the United Nations shall be the Depositary of this Agree-
ment.

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 hav-
ing withdrawn from this Agreement.

Article 29
The original of this Agreement, of which the Arabic, Chinese, English, French, Rus-
sian 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 3

Activities with respect to which persons must be participants

Part 1

Forestry

(appplies on and after 1 January 2008)

Deforesting pre-1990 forest land other than forest land that under section 179A may not be treated as deforested, if the area deforested is more than 2 hectares in the five-year period commencing on 1 January 2008, or in any subsequent five-year period after that any mandatory emissions return period, but excluding any pre-1990 forest land that is affected by a natural event that permanently prevents re-establishing a forest on that land.

Part 1A

Pre-1990 offsetting forest land

(appplies on and after 1 January 2013)

Deforesting pre-1990 offsetting forest land, but excluding any pre-1990 offsetting forest land that is affected by a natural event that permanently prevents re-establishing a forest on that land.

Part 2

Liquid fossil fuels

(appplies, subject to sections 218 and 219, on and after 1 January 2009)

Owning obligation fuel—

(a) at the time the obligation fuel is—
   (i) removed for home consumption in accordance with the Customs and Excise Act 2018; or
   (ii) otherwise removed from a refinery, other than for export; and
(b) if the total amount of the obligation fuel removed under paragraph (a) exceeds 50 000 litres in a year.
Part 3
Stationary energy

Subpart 1

(apply on and after 1 January 2010)

Importing coal.

Mining coal where the volume of coal mined exceeds 2,000 tonnes in a year.

Importing natural gas where the volume of natural gas imported exceeds 10,000 litres in a year.

Mining natural gas, other than for export.

Using geothermal fluid for the purpose of generating electricity or industrial heat (initial use only).

Combusting used oil, waste oil, used tyres, or waste for the purpose of generating electricity or industrial heat.

Refining petroleum where the refining involves the use of intermediate crude oil products (for example, refinery fuels and gases) for energy or feedstock purposes.

Subpart 2

(apply on and after 1 January 2014)

Using crude oil or other liquid hydrocarbons (other than obligation fuel or as specified in Part 3) where any prescribed threshold is met.

Part 4
Industrial processes

Subpart 1

(apply on and after 1 January 2010)

Producing iron or steel.

Producing aluminium, resulting in the consumption of anodes or the production of anode effects.

Producing clinker, or burnt lime, resulting in calcination of limestone, or calcium carbonates.

Producing glass using soda ash.

Producing gold.
Subpart 2

(applies, subject to sections 218 and 219, on and after 1 January 2011)

Operating electrical switchgear that uses sulphur hexafluoride where any prescribed threshold is met.

Importing hydrofluorocarbons or perfluorocarbons, excluding hydrofluorocarbons or perfluorocarbons contained in goods.

Manufacturing hydrofluorocarbons or perfluorocarbons other than through producing aluminium, resulting in the consumption of anodes or the production of anode effects.

Part 5

Agriculture

Subpart 1—Fertiliser (processor)

(applies, subject to sections 218 and 219, on and after 1 January 2011 unless subpart 2 brought into force) (reporting obligations apply from 1 January 2011; surrender obligations apply from 1 January 2025)

Importing or manufacturing synthetic fertilisers containing nitrogen.

Subpart 2—Fertiliser (farmer)

(applies, subject to sections 218 and 219, from 1 January 2011, if determined by Order in Council) (reporting and surrender obligations apply from a date to be determined by Order in Council)

Purchasing, other than for on-selling, synthetic fertiliser containing nitrogen for application to land.

Subpart 3—Animals (processor)

(applies, subject to sections 218 and 219, on and after 1 January 2011 unless subpart 4 brought into force) (reporting obligations apply from 1 January 2011)

Slaughtering ruminant animals, pigs, horses, or poultry by a person who is the operator of a risk management programme registered under the Animal Products Act 1999 for the slaughter of animals.

Dairy processing of milk or colostrum.

Exporting from New Zealand live cattle, sheep, or pigs in accordance with an animal welfare export certificate.
Subpart 4—Animals (farmer)

(appplies, subject to sections 218 and 219, from 1 January 2011, if determined
by Order in Council) (reporting obligations apply from 1 January 2024;
surrender obligations apply from 1 January 2025)

Farming, raising, growing, or keeping ruminant animals, pigs, horses, or poultry
for—

(a) reward; or

(b) the purpose of trade in those animals, or in animal material or animal products
taken or derived from those animals.

Part 6
Waste

(appplies, subject to sections 218 and 219, on and after 1 January 2011)

Operating a disposal facility.
Schedule 4

Activities with respect to which persons may be participants

Part 1

Forestry removal activities

(appplies on and after 1 January 2008)

Owning post-1989 forest land, other than post-1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949.

Holding a registered forestry right or being the leaseholder under a registered lease of post-1989 forest land, other than post-1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949.

Being a party to a Crown conservation contract.

Part 1

Standard forestry removal activities

(appplies on and after 1 January 2008)

Any of the following activities in respect of post-1989 forest land, having 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 registered under section 67ZD of the Forests Act 1949;

(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 registered under section 67ZD of the Forests Act 1949;

(c) being a party to a Crown conservation contract in respect of the land.

Part 1A

Permanent forestry removal activities

(applies on and after the day after Royal assent for Climate Change Response (Emissions Trading Reform) Amendment Act 2019)

Any of the activities specified in Part 1 in respect of post-1989 forest land, having chosen this Part (instead of Part 1) to apply to the land.
Part 2

Other removal activities

Subpart 1

(applies on and after 1 January 2010)

Producing a product that contains a substance—

(a) that—

(i) is permanently embedded in the product; or

(ii) is temporarily embedded in the product, and the product is exported with the substance embedded; and

(b) that would result in emissions if not embedded; and

(c) where—

(i) a person is required to surrender units under this Act in respect of the emissions that would result if the substance was not embedded; and

(ii) the result of the substance being embedded in the circumstances in paragraph (a)(i) or (ii) is a reduction from emissions reported in New Zealand’s annual inventory report under the Convention or Protocol or any emissions report from New Zealand under a successor international agreement—any emissions report provided by New Zealand under its international climate change obligations; and

(iii) any prescribed threshold is met.

Subpart 2

(applies on and after a date determined by Order in Council)

Storing of carbon dioxide after capture, where—

(a) a person is required to surrender units under this Act in respect of the emissions that would result if the carbon dioxide was not captured and stored; and

(b) the result of the carbon dioxide being captured and stored is a reduction from emissions reported in New Zealand’s annual inventory report under the Convention or Protocol or any emissions report from New Zealand under a successor international agreement—any emissions report provided by New Zealand under its international climate change obligations; and

(c) any prescribed threshold is met.

Subpart 3

(applies, subject to sections 218, 219, and 220, on and after 1 January 2011)

Exporting hydrofluorocarbons or perfluorocarbons, including hydrofluorocarbons or perfluorocarbons contained in goods, where any prescribed threshold is met.
Destroying hydrofluorocarbons or perfluorocarbons where any prescribed threshold is met.

Part 3
Liquid fossil fuels

(appplies on and after 1 July 2013)
Purchasing obligation fuel from 1 or more participants who carry out an activity listed in Part 2 of Schedule 3 where any prescribed threshold is met.

Part 4
Stationary energy

(appplies on and after 1 January 2009)
Purchasing coal from 1 or more participants who mine coal where the total coal purchased exceeds 250 000 tonnes per year.
Purchasing natural gas from 1 or more participants who mine natural gas where the total natural gas purchased exceeds 2 petajoules per year.

Part 5
Agriculture

[Repealed]