

Reprint
as at 23 June 2020



**Climate Change Response (Emissions Trading)
Amendment Act 2008**

Public Act 2008 No 85
Date of assent 25 September 2008
Commencement see section 2

Contents

	Page
1 Title	10
2 Commencement	10
3 Principal Act amended	11
4 New section 2A inserted	11
2A Application of Schedules 3 and 4	11
5 Purpose	12
6 Interpretation	13
7 Minister of Finance may give directions to Registrar regarding accounts and units	21
8 Registrar must give effect to directions of Minister of Finance	22
9 Minister of Finance may obtain information from inventory agency and Registrar	22
10 Purpose of Registry	22
11 Appointment of Registrar	23
12 Section 14 repealed	23
13 Registrar must allocate unique numbers	23
14 Carry-over of units	23

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry for the Environment.

15	Commitment period reserve	24
16	Form and content of unit register	24
17	Opening holding accounts	24
18	Closing holding accounts	24
19	Transfer of units	25
20	New sections 18CA, 18CB, 18CC, and 18CD inserted	25
	18CA Effect of surrender, retirement, cancellation, and conversion	25
	18CB Restriction on surrender of assigned amount units	25
	18CC Restriction on surrender of assigned amount units issued during first commitment period	26
	18CD Effect of surrendering restricted assigned amount units	26
21	New section 19 substituted	26
	19 Retirement of Kyoto units by the Crown	27
22	Transactions must be registered	27
23	Registration procedure	27
24	New section 21AA inserted	28
	21AA Registration procedure for New Zealand units and approved overseas units	28
25	Defective applications	30
26	Receiving units from overseas registries	30
27	New section 23A inserted	30
	23A Receiving New Zealand units and approved overseas units from overseas registries	30
28	Priority of registration	30
29	Correction of unit register	31
30	Unit register must be open for search	31
31	New section 27 substituted	31
	27 Information accessible by search	31
32	Recovery of fees	33
33	Crown or Registrar not liable in relation to searches in certain cases	34
34	New heading and sections 30E to 30K inserted	34
	<i>Miscellaneous provisions</i>	
	30E Conversion of New Zealand units into designated assigned amount units for sale overseas or cancellation	34
	30F Restrictions on certain New Zealand units allocated to landowners of pre-1990 forest land	35
	30G Regulations relating to Part 2	35
	30H Procedure for certain regulations relating to units	37
	30I Incorporation by reference in regulations made under section 30G	38
	30J Signing false declaration with respect to regulations made under section 30G	38

	30K	Providing false or misleading information to Registrar	39
35		New Part 3 heading substituted	39
36		Primary functions of inventory agency	39
37		Inventory agency under direction of Minister responsible for inventory agency	39
38		New heading substituted	39
39		Authorisation of inspectors	39
40		Power to enter land or premises to collect information to estimate emissions or removals of greenhouse gases	40
41		Limitation on power of entry under section 37	40
42		New section 45A inserted	40
	45A	Protection of persons acting under authority of this Part	40
43		Obstructing, hindering, resisting, or deceiving person exercising power under Act	40
44		Signing false declaration	40
45		Section 48A repealed	40
46		Reporting	40
47		Regulations	40
48		New section 51 substituted	41
	51	Incorporation by reference in regulations made under section 50	41
49		Inventory agency must report to Minister responsible for inventory agency on certain matters before certain regulations are made	42
50		New Parts 4 and 5 inserted	42
Part 4			
New Zealand greenhouse gas emissions trading scheme			
Subpart 1—Participants			
54		Participants	42
55		Associated persons	43
56		Registration as participant in respect of activities listed in Schedule 3	43
57		Applications to be registered as participant in respect of activities listed in Schedule 4	44
58		Removal from register of participants in respect of activities listed in Schedule 4	46
59		Removal from register of participants in respect of activities listed in Schedules 3 and 4	47
60		Exemptions in respect of activities listed in Schedule 3	47
61		Participants must have holding accounts	48
62		Monitoring of emissions and removals	49
63		Liability to surrender units to cover emissions	49
64		Entitlement to receive New Zealand units for removal activities	49

65	Annual emissions returns	50
66	Quarterly returns for other removal activities	51
67	Retention of emissions records	51
	Subpart 2—Issuance and allocation of New Zealand units	
68	Interpretation	52
69	Issuance of New Zealand units	52
70	Notification of intention regarding New Zealand units	53
71	Allocation in respect of pre-1990 forest land	54
72	Minister to appoint person to hold certain New Zealand units	56
73	Allocation to industry	57
74	Establishment of Innovation Fund	59
75	Allocation to fishing vessel operators	60
76	Allocation to agriculture	61
77	Other matters with respect to allocation plans	62
78	Draft allocation plans	63
79	Governor-General may issue allocation plans	64
80	Correction and publication of allocation plans	65
81	Content of criteria and methodologies in allocation plans	65
82	Determinations made in accordance with allocation plan	66
83	Minister may require further information after determination made	68
84	New determination made in accordance with allocation plan	69
85	Effect of new determination	71
86	Balance of units at end of true-up period or other balance date	72
	Subpart 3—Chief executive	
	<i>General administrative provisions</i>	
87	Functions of chief executive	73
88	Directions to chief executive	73
89	Chief executive to publish certain information	74
90	Chief executive may prescribe form of certain documents	75
91	Approval of unique emissions factors	75
92	Recognition of verifiers	76
	<i>Verification and inquiry</i>	
93	Appointment of enforcement officers	77
94	Power to require information	77
95	Power to inquire	78
96	Inquiry before District Court Judge	78
97	No criminal proceedings for statements under section 95 or 96	79

98	Expenses in relation to inquiries by chief executive or District Court Judge	79
99	Obligation to maintain confidentiality	79
100	Power of entry for investigation	80
101	Applications for warrants	81
102	Proof of authority must be produced	82
103	Notice of entry	82
104	Information obtained under section 100 or 101 only admissible in proceedings for alleged breach of obligations imposed under this Part and Part 5	82
105	Return of items seized	83
106	Protection of persons acting under authority of this Part	83
	<i>Emissions rulings</i>	
107	Applications for emissions rulings	83
108	Matters in relation to which chief executive may decline to make emissions rulings	84
109	Making of emissions rulings	84
110	Notice of emissions rulings	85
111	Confirmation of basis of emissions rulings	85
112	Notifying chief executive of changes relevant to or failure to comply with emissions rulings	85
113	Correction of emissions rulings	86
114	Cessation of emissions rulings	86
115	Appeal from decisions of chief executive	86
116	Effect of emissions rulings	87
117	Chief executive may publish certain aspects of emissions rulings	87
	<i>Emissions returns</i>	
118	Submission of final emissions returns	87
119	Power to extend date for emissions returns	88
120	Amendment to emissions returns by chief executive	88
121	Assessment if default made in submitting emissions return	88
122	Amendment or assessment presumed to be correct	89
123	Effect of amendment or assessment	89
124	Reimbursement of units by chief executive	89
125	Repayment of units by persons in case of error	90
126	Obligation to surrender or repay units not suspended by review or appeal	91
127	Time bar for amendment of emissions returns	91
128	Amendments and assessments made by electronic means	92
	Subpart 4—Offences and penalties	
129	Strict liability offences	92

130	Offence for breach of section 99	93
131	Offence for failure to provide information or documents	93
132	Other offences	93
133	Evasion or similar offences	94
134	Penalty for failing to surrender or repay units	94
135	Reductions in penalty	96
136	Additional penalty for knowing failure to comply	96
137	Interest for late payment	97
138	Obligation to pay penalty not suspended by appeal	98
139	Liability of body corporate	99
140	Liability of directors and managers of companies	99
141	Liability of companies and persons for actions of director, agent, or employee	99
142	Limitation period for commencement of proceedings	100
143	Evidence in proceedings	100
	Subpart 5—Review and appeal provisions	
144	Request for review of decisions	101
145	Right of appeal to District Court	101
146	Appeals to High Court on questions of law only	101
	Subpart 6—Miscellaneous provisions	
147	Giving of notices by chief executive	102
148	Giving of notices to chief executive	102
149	Sharing information	103
150	Formation of consolidated group	103
151	Changes to consolidated groups	104
152	Nominated entities	105
153	Effect of being member of consolidated group	106
154	Emissions returns by consolidated group in respect of activities in Part 1 of Schedule 4	107
155	Ceasing to be member of consolidated group	107
156	Effect of ceasing to be member of consolidated group	109
157	Joint activities	109
158	Compensation for participants where public works result in liability to surrender units	109
159	Chief executive must surrender or repay units for person who is in default or insolvent	110
160	Reviews of operation of emissions trading scheme	110
161	Appointment and conduct of review panel	112
162	Regulations adding further activity to Part 2 of Schedule 4	113
163	Regulations relating to methodologies and verifiers	114
164	Regulations relating to unique emissions factors	116
165	Regulations relating to offsetting of pre-1990 forest land	116

166	Procedure for regulations relating to methodologies, verification, unique emissions factors, and offsetting	117
167	Regulations relating to fees and charges	117
168	Other regulations	119
169	Incorporation by reference in regulations made under section 163	120
170	Effect of amendments to, or replacement of, material incorporated by reference in regulations	120
171	Proof of material incorporated by reference	120
172	Effect of expiry of material incorporated by reference	121
173	Requirement to consult	121
174	Public access to material incorporated by reference	122
175	Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference	123
176	Application of Regulations (Disallowance) Act 1989 to material incorporated by reference	123
177	Application of Standards Act 1988 not affected	123
178	Recovery of fees or charges	123

Part 5

Sector specific provisions

Subpart 1—Forestry sector

General

179	Forest land to be treated as deforested in certain cases	123
	<i>Pre-1990 forest land</i>	
180	Participant in respect of pre-1990 forest land	124
181	When deforestation to be treated as occurring in respect of pre-1990 forest land	124
182	Offsetting in relation to pre-1990 forest land	125
183	Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land	126
184	Exemptions for deforestation of land with tree weeds	127
185	Effect of exemption	129
186	Methodology for pre-1990 forest land	129
	<i>Post-1989 forest land</i>	
187	Conditions on registration as participant in respect of certain activities relating to post-1989 forest land	130
188	Registration as participant in respect of post-1989 forest land	131
189	Emissions returns for post-1989 forest land activities	133
190	Special rules regarding surrender of units in relation to post-1989 forest land	137

191	Ceasing to be registered as participant in respect of post-1989 forest land	138
192	Transfer of registration as participant in respect of post-1989 forest land	139
193	Transfer of registration on expiry or termination of registered forestry right, registered lease, or Crown conservation contract in relation to post-1989 forest land	141
194	Information about status of forest land	143
	<i>Post-1989 forest land and pre-1990 forest land</i>	
195	Notification of status of forest land	144
	<i>Transitional provisions</i>	
196	First emissions return for pre-1990 forest land activities	144
197	First emissions return for post-1989 forest land activities	145
	Subpart 2—Liquid fossil fuels sector	
198	Registration as participant by purchasers of jet fuel	145
199	Historical information sufficient to satisfy chief executive	146
200	Effect of purchasing less than the threshold level of obligation jet fuel	146
201	Effect of registration by purchasers of jet fuel	146
202	Activities added to Part 2 of Schedule 3	146
203	Treatment of obligation fuels	148
	Subpart 3—Stationary energy sector	
204	Participant with respect to mining coal or natural gas	148
205	Mining natural gas in exclusive economic zone and continental shelf	148
206	Obligation with respect to combusting used oil, waste oil, and waste	148
207	Obligation with respect to mining coal	149
208	Purchase of coal or natural gas from wholly owned subsidiary of Part 3 of Schedule 3 participant	149
209	Registration as participant by purchasers of coal or natural gas	149
210	Historical information sufficient to satisfy chief executive	150
211	Effect of purchasing less than threshold level of coal or natural gas	150
212	Effect of registration by purchasers of coal or natural gas	151
	Subpart 4—Agriculture	
213	Registration as participants by persons carrying out activities listed in Part 5 of Schedule 4	151
214	Historical information sufficient to satisfy chief executive	152
215	Effect of purchasing or farming less than threshold level	152
216	Effect of registration by farmers	153

	Subpart 5—Transitional provisions	
217	Transitional provision for penalties	153
218	Transitional provision for voluntary reporting	154
219	Transitional provision for mandatory reporting by certain participants	155
220	Additional transitional provision for mandatory reporting for subpart 3 of Part 2 of Schedule 4 participants	155
221	Additional transitional provisions for Part 3 of Schedule 4 participants	156
222	Transitional provisions regarding regulations that replace existing unit register regulations	156
	Part 6	
	Other matters	
223	Establishment of Household Fund	156
224	Gazetting of targets	157
51	Regulations upon which consultation has been undertaken before commencement of this section <i>[Repealed]</i>	158
52	New Schedules 3 and 4 added	158
53	Process to apply before offsetting provisions may be commenced <i>[Repealed]</i>	158
	<i>Consequential amendments</i>	
54	Amendments to Forests Act 1949	158
55	Amendments to Forestry Rights Registration Act 1983	159
56	Amendments to Summary Proceedings Act 1957	159
57	Amendments to Income Tax Act 2004	159
58	New heading and section CB 29 inserted	159
	<i>Emissions trading scheme</i>	
	CB 29 Disposal of ETS units	159
59	New section CW 3B inserted	160
	CW 3B Pre-1990 forest land units: emissions trading scheme	160
60	New section CX 44F inserted	161
	CX 44F Issue of post-1989 forest land units	161
61	New heading and sections DB 46 and DB 47 inserted	161
	<i>Emissions trading scheme</i>	
	DB 46 Acquisition of ETS units	161
	DB 47 Surrender of pre-1990 forest land units for post-1989 forest land deforestation	162
62	Meaning of trading stock	162
63	Valuation of excepted financial arrangements	162
64	What is an excepted financial arrangement?	162
65	New section GD 16 inserted	162
	GD 16 Disposals of ETS units at below market value	163

66	Definitions	163
67	Amendments to Income Tax Act 2007	164
68	New heading and section CB 36 inserted	164
<i>Emissions trading scheme</i>		
	CB 36 Disposal of ETS units	165
69	New section CW 3B inserted	165
	CW 3B Pre-1990 forest land units: emissions trading scheme	166
70	New section CX 48B inserted	166
	CX 48B Issue of post-1989 forest land units	166
71	New heading and sections DB 60 and DB 61 inserted	166
<i>Emissions trading scheme</i>		
	DB 60 Acquisition of ETS units	166
	DB 61 Surrender of pre-1990 forest land units for post-1989 forest land emissions	167
72	Meaning of trading stock	167
73	Valuation of excepted financial arrangements	167
74	What is an excepted financial arrangement?	168
75	New section GC 4B inserted	168
	GC 4B Disposals of ETS units at below market value	168
76	Definitions	168
77	Goods and Services Tax Act 1985	170
78	Interpretation	170
79	Zero-rating of goods	170
80	Zero-rating of services	170
81	Amendments to Personal Property Securities Act 1999	171
Schedule		173
New Schedules 3 and 4 added		

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Climate Change Response (Emissions Trading) Amendment Act 2008.

2 Commencement

(1) *[Repealed]*

(2) Sections 77 to 80 of this Act come into force on 1 January 2009.

(3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Section 2(1): repealed, on 1 January 2013, by section 103 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

3 Principal Act amended

This Act amends the Climate Change Response Act 2002.

4 New section 2A inserted

The following section is inserted after section 2:

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 the Part or subpart in Schedule 3 or 4 in which the activity is listed applies; and
 - (b) applies subject to sections 217 to 221.
- (2) Part 1 of Schedule 3 and Parts 1 and 3 of Schedule 4 apply on and after 1 January 2008.
- (3) Part 2 of Schedule 3 and Part 4 of Schedule 4 apply on and after 1 January 2009.
- (4) 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, unless repealed under subsection (10) before that date.
- (6) Subpart 3 of Part 5 of Schedule 3 applies on and after 1 January 2011, unless repealed under subsection (11) before that date.
- (7) 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.
- (8) Subpart 2 of Part 5 of Schedule 3 applies on and after 1 January 2011 if the Governor-General makes an Order in Council to that effect.
- (9) Subpart 4 of Part 5 of Schedule 3 applies on and after 1 January 2011 if the Governor-General makes an Order in Council to that effect.
- (10) If the Governor-General makes an Order in Council under subsection (8), then subsection (5) and subpart 1 of Part 5 of Schedule 3 expire and are repealed.
- (11) If the Governor-General makes an Order in Council under subsection (9), then subsection (6) and subpart 3 of Part 5 of Schedule 3 expire and are repealed.
- (12) If, by 30 June 2010, the Governor-General does not make an Order in Council under subsection (8) that applies subpart 2 of Part 5 of Schedule 3, then that subpart and subsection (8) expire and are repealed on 30 June 2010.
- (13) If, by 30 June 2010, the Governor-General does not make an Order in Council under subsection (9) that applies subpart 4 of Part 5 of Schedule 3, then that subpart and subsection (9) expire and are repealed on 30 June 2010.
- (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) Subpart 1 of Part 5 of Schedule 4 applies on and after a date no earlier than 1 January 2011 to be appointed by the Governor-General by Order in Council.
- (16) Subpart 2 of Part 5 of Schedule 4 applies on and after a date no earlier than 1 January 2011 to be appointed by the Governor-General by Order in Council.
- (17) If, by 31 December 2012, the Governor-General does not make an Order in Council under subsection (15) that applies subpart 1 of Part 5 of Schedule 4, then that subpart and subsection (15) expire and are repealed on 31 December 2012.
- (18) If, by 31 December 2012, the Governor-General does not make an Order in Council under subsection (16) that applies subpart 2 of Part 5 of Schedule 4, then that subpart and subsection (16) expire and are repealed on 31 December 2012.
- (19) If, by 31 December 2012, the Governor-General does not make an Order in Council under subsection (15) or (16) that applies subpart 1 or 2 of Part 5 of Schedule 4, as the case may be, then subpart 4 of Part 5 (consisting of sections 213 to 216) expires and is repealed on 31 December 2012.

5 Purpose

Section 3 is amended by repealing subsection (1) and substituting the following subsections:

- (1) The purpose of this Act is to—
 - (a) enable New Zealand to meet its international obligations under the Convention and the Protocol, 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; 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;
 - (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 greenhouse gas emissions by assisting New Zealand to meet its international obligations under the Convention and the Protocol, and by reducing New Zealand's net emissions below business-as-usual levels.
- (2) For the purposes of this section, **business-as-usual levels** means the levels of New Zealand's greenhouse gas emissions, estimated by a Minister or chief executive with powers or functions under this Act at any particular point in time, as if the greenhouse gas emissions trading scheme provided for under this Act had not been implemented.

6 Interpretation

- (1) Section 4(1) is amended by repealing the definitions of **Minister**, **Minister responsible for the inventory agency**, **Minister responsible for the Registry**, and **representative identifier**.
- (2) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

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

allocation plan means an allocation plan issued under section 79 or 80

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

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

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

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

chief executive, in relation to a Part, means the chief executive of the department that is, with the authority of the Prime Minister, responsible for the administration of the Part

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

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

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

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 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

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

draft allocation plan means a draft allocation plan prepared under section 78

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

emissions return means—

- (a) an annual emissions return submitted under section 65; or
- (b) an emissions return submitted under section 66; or
- (c) a final emissions return submitted under section 118; or
- (d) an emissions return submitted under section 187, 189, 191, or 193

entity, in relation to a group, means a reporting entity or reporting entity's subsidiary, within the meaning of section 2(1) of the Financial Reporting Act 1993

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
- (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

export has a corresponding meaning to **exportation** in section 2(1) of the Customs and Excise Act 1996

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

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 when the forest species reach maturity 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 at maturity 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 at maturity 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 species means a tree species capable of reaching at least 5 metres in height at maturity in the place where it is located

group has the same meaning as in section 2(1) of the Financial Reporting Act 1993

import has a corresponding meaning to **importation** in section 2(1) of the Customs and Excise Act 1996

indigenous forest species means a forest species that occurs naturally in New Zealand or has arrived in New Zealand without human assistance

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

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 2(2) 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

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

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, in relation to a Part of this Act, means the Minister who is, under the authority of any warrant or under the authority of the Prime Minister, responsible for the administration of the Part

Minister responsible for the administration of this Act 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

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

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

obligation fuel means any fuel specified as obligation fuel in regulations made under this Act

obligation jet fuel means any jet fuel specified as obligation jet fuel in regulations made under this Act

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

participant means a person who is a participant under section 54

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 between 1 January 1990 and 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
- (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)

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)

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

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

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 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 1952,—

(i) means a lease registered under that Act; and

(ii) includes a lease registered under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002:

(b) in relation to a lease in respect of land that is not registered under the Land Transfer Act 1952, means a lease registered under the Deeds Registration Act 1908

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

removals, in relation to a removal activity, means carbon dioxide equivalent greenhouse gases that are, as a result of the removal activity,—

(a) removed from the atmosphere; or

(b) not released into the atmosphere; or

(c) a reduction from emissions reported in—

(i) New Zealand's annual inventory report under section 32 as required under the Convention or Protocol for any year; or

(ii) any emissions report from New Zealand under a successor international agreement

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

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

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

waste means any thing that—

(a) has been disposed of or discarded; and

(b) includes waste that is defined by its composition or source (for example, organic waste, electronic waste, or construction and demolition waste)

year means a calendar year ending on 31 December

(3) The definition of **assigned amount unit** in section 4(1) is amended by omitting “(or AAU)”.

- (4) The definition of **cancel** in section 4(1) is repealed and the following definition substituted:
- 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)
- (5) The definition of **carbon dioxide equivalent** in section 4(1) is amended by omitting “metric” in each place where it appears.
- (6) The definition of **carry over** in section 4(1) is amended by—
- (a) omitting “**carry over**” and substituting “**carry-over**”; and
 - (b) omitting “carried over” and substituting “carried-over”.
- (7) The definition of **certified emission reduction unit** in section 4(1) is amended by omitting “(or CER)”.
- (8) The definition of **commitment period reserve** in section 4(1) is amended by inserting “Kyoto” after “number of” in the first place where it appears.
- (9) Paragraph (b) of the definition of **commitment period reserve** in section 4(1) is amended by omitting “metric”.
- (10) The definition of **emission reduction unit** in section 4(1) is amended by omitting “(or ERU)”.
- (11) The definition of **holding account** in section 4(1) is amended by omitting “retired or cancelled” and substituting “retired, surrendered, converted, or cancelled”.
- (12) The definition of **independent transaction log** in section 4(1) is repealed.
- (13) The definition of **initial assigned amount** in section 4(1) is amended by omitting “metric”.
- (14) The definition of **inventory agency** in section 4(1) is repealed and the following definition substituted:
- inventory agency** means the chief executive of the department that is, with the authority of the Prime Minister, responsible for the administration of Part 3
- (15) The definition of **long-term certified emission reduction unit** in section 4(1) is amended by omitting “(or ICER)”.
- (16) The definition of **overseas registry** in section 4(1) is amended by adding the following paragraph:
- (c) any other prescribed registry
- (17) Paragraph (b) of the definition of **relevant commitment period** in section 4(1) is amended by inserting “Kyoto” after “account or”.
- (18) Paragraph (b) of the definition of **removal unit** in section 4(1) is amended by omitting “(or RMU)”.
- (19) The definition of **representative identifier** in section 4(1) is repealed.

- (20) The definition of **retire** in section 4(1) is repealed and the following definition substituted:
- 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)
- (21) The definition of **retirement account** in section 4(1) is amended by inserting “Kyoto” after “of holding”.
- (22) The definition of **temporary certified emission reduction unit** in section 4(1) is amended by omitting “(or tCER)”.
- (23) The definition of **units** in section 4(1) is repealed and the following definition substituted:
- unit** means a Kyoto unit, a New Zealand unit, or an approved overseas unit
- (24) Section 4 is amended by adding the following subsections:
- (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) Pre-1990 forest land, in respect of which conversion to land that is not forest land had commenced prior to 31 December 2007, is to be treated as deforested on 31 December 2007 if, on that date, the land had—
- (a) no standing exotic forest species (dead or alive), other than a strip of standing exotic forest species that had, or was likely at maturity to have, tree crown cover of an average width of less than 30 metres; and
 - (b) no other merchantable timber from exotic forest species.

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

- (1) Section 7(1)(a) is amended by adding the following subparagraphs:

- (vii) a surrender account:
 - (viii) a conversion account:
- (2) Section 7(1)(d) is amended by inserting “, subject to any prescribed restriction or prohibition,” after “transfer”.
 - (3) Section 7(1)(d) is amended by inserting “the surrender account, the conversion account,” after “retirement account,”.
 - (4) Section 7(1)(e) is amended by omitting “carry over” and substituting “carry-over”.
 - (5) Section 7(2)(b) is repealed and the following paragraphs are substituted:
 - (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 account holder has failed to comply with Part 2 or any regulations made under section 30G; or
 - (c) section 30F(3) applies.

8 Registrar must give effect to directions of Minister of Finance

Section 8 is amended by omitting “section 50” and substituting “section 30G”.

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

Section 9(b)(ii) is amended by omitting “carried over” and substituting “carried-over”.

10 Purpose of Registry

- (1) Section 10 is amended by inserting “in relation to Kyoto units” after “purpose of the Registry”.
- (2) Section 10(a) is amended by inserting “, transparent, and efficient” after “accurate”.
- (3) Section 10(a)(i) is amended by inserting “surrender,” after “retirement,”.
- (4) Section 10(a)(i) is amended by inserting “Kyoto” after “cancellation of”.
- (5) Section 10(b)(ii) is amended by omitting “independent” and substituting “international”.
- (6) Section 10(b)(ii) is amended by omitting “; and” and substituting “.”.
- (7) Section 10(c) is repealed.
- (8) Section 10 is amended by adding the following subsections as subsections (2) and (3):
 - (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 this Act to enable all of them to perform their functions and duties, and exercise their powers.

11 Appointment of Registrar

Section 11 is amended by omitting “of the Ministry responsible for the Registry”.

12 Section 14 repealed

Section 14 is repealed.

13 Registrar must allocate unique numbers

- (1) The heading to section 15 is amended by omitting “**must**” and substituting “**to**”.
- (2) Section 15 is amended by inserting the following subsection after subsection (1):
 - (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.

14 Carry-over of units

- (1) The heading to section 16 is amended by inserting “**certain Kyoto**” after “**Carry-over of**”.
- (2) Section 16(1) is amended by omitting “carry over” and substituting “carry-over”.
- (3) Section 16(2) is amended by omitting “carried over” and substituting “carried-over”.

15 Commitment period reserve

- (1) Section 17 is amended by repealing subsection (1) and substituting the following subsection:
 - (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) Section 17(2) is amended by inserting “Kyoto” after “cancellations of”.

16 Form and content of unit register

- (1) Section 18(2)(b)(i) is amended by inserting “surrender, conversion,” after “retirement”.
- (2) Section 18(3) is amended by repealing paragraph (a) and substituting the following paragraph:
 - (a) indivisible with respect to the issue, holding, transfer, retirement, replacement, surrender, carry-over, cancellation, and conversion of a unit within the unit register; and

17 Opening holding accounts

Section 18A(3)(b) is amended by omitting “a representative identifier” and substituting “an account number”.

18 Closing holding accounts

- (1) Section 18B(2) is amended by omitting “Minister responsible for the Registry” in each place where it appears and substituting in each case “chief executive”.
- (2) Section 18B(2)(b)(ii)(B) is amended by omitting “with this Act” and substituting “with this Part”.
- (3) Section 18B(2)(b)(ii)(B) is amended by omitting “under this Act” and substituting “regarding the matters specified in section 30G”.
- (4) Section 18B is amended by repealing subsection (6) and substituting the following subsection:
 - (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 chief executive is satisfied that an account holder no longer requires a holding account, make a written submission to the chief

executive, before the account is closed, regarding the account holder's need to retain the account.

19 Transfer of units

- (1) Section 18C(3) is amended by inserting “Kyoto” after “to transfer”.
- (2) Section 18C(3) is amended by omitting “the general cancellation” and substituting “a retirement”.
- (3) Section 18C(3)(a) is amended by omitting “the general cancellation” and substituting “a retirement”.
- (4) Section 18C(3)(b) is amended by omitting “the general cancellation” and substituting “a retirement”.

20 New sections 18CA, 18CB, 18CC, and 18CD inserted

The following sections are inserted after section 18C:

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

- (1) A unit that is transferred to a cancellation account may not be further transferred, retired, surrendered, carried-over, 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 direction from the Minister of Finance, to—
 - (a) a retirement account or a cancellation account; or
 - (b) a participant's holding account, if the direction was given on receipt of a notice from the chief executive under section 124 (which relates to reimbursement of Kyoto units).
- (4) A New Zealand unit or an approved overseas unit that is transferred to a surrender account may be further transferred only in accordance with a direction from the Minister of Finance given on receipt of a notice from the chief executive under section 124 (which relates to reimbursement of New Zealand units or approved overseas units).
- (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).

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 chief executive of the department responsible for the administration of Part 4 that the transfer has been reversed.
- (3) If a transfer is reversed under subsection (2),—
- (a) the chief executive of the department responsible for the administration of Part 4 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 chief executive of the department responsible for the administration of Part 4 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).

21 New section 19 substituted

Section 19 is repealed and the following section substituted:

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.

22 Transactions must be registered

- (1) Section 20(1) is amended by inserting “surrender, convert,” after “retire,”.
- (2) Section 20(2)(a) is amended by omitting “independent” and substituting “international”.

23 Registration procedure

- (1) The heading to section 21 is amended by adding “**for Kyoto units**”.
- (2) Section 21(1) is amended by inserting “in relation to Kyoto units” after “a direction”.
- (3) Section 21(1) is amended by inserting “in relation to Kyoto units” after “a transaction”.
- (4) Section 21(1) is amended by repealing paragraph (b) and substituting the following paragraphs:
 - (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 to,—
 - (A) in the case of a direction, the Minister of Finance 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.

- (5) Section 21 is amended by repealing subsection (2) and substituting the following subsection:
- (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
 - (c) send electronic notification that the transaction has been recorded in the unit register to,—
 - (i) in the case of a direction, the Minister of Finance; or
 - (ii) in the case of an application, the account holder.
- (6) Section 21(3) is amended by omitting “independent” in each place where it appears and substituting in each case “international”.
- (7) Section 21(3) is amended by inserting “in relation to Kyoto units” after “a transaction”.
- (8) Section 21(3) is amended by repealing paragraph (c) and substituting the following paragraphs:
- (c) 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 of Finance; or
 - (ii) in the case of an application, the account holder.
- (9) Section 21(4) is amended by omitting “units” and substituting “assigned amount units, certified emission reduction units, and emission reduction units”.

24 New section 21AA inserted

The following section is inserted after section 21:

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 the Minister of Finance, 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
 - (c) if the proposed transaction does not concern an overseas registry,—
 - (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 of Finance 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 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 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 of Finance; or
 - (ii) in the case of an application, the account holder.
- (3) If the Registrar receives a notification from the overseas registry 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 of the termination; and
 - (d) send electronic notification that the transaction has been terminated to,—
 - (i) in the case of a direction, the Minister of Finance; or
 - (ii) in the case of an application, the account holder.

25 Defective applications

Section 21B(1)(a) is repealed.

26 Receiving units from overseas registries

- (1) The heading to section 23 is amended by inserting “**Kyoto**” after “**Receiving**”.
- (2) Section 23(1) and (2) is amended by inserting “Kyoto” after “to transfer”.
- (3) Section 23 is amended by omitting “independent” in each place where it appears and substituting in each case “international”.
- (4) Section 23(3) is amended by inserting “Kyoto” after “transfer of”.

27 New section 23A inserted

The following section is inserted after section 23:

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

- (1) If the Registrar receives notification from an overseas registry 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 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 of the termination.
- (3) A transfer of New Zealand units or approved overseas units from an overseas registry is subject to any regulations made under this Act.

28 Priority of registration

- (1) Section 24 is amended by repealing subsection (1) and substituting the following subsection:
 - (1) A direction given by the Minister of Finance 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) Section 24 is amended by adding the following subsection:
- (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.

29 Correction of unit register

- (1) Section 25 is amended by repealing subsection (1) and substituting the following subsection:
- (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 of Finance, if the Registrar registered the transaction following receipt of a direction from the Minister of Finance; or
 - (b) the account holder who applied to register the transaction.
- (2) Section 25(3) is amended by omitting “must” and substituting “may”.
- (3) Section 25(3)(c) is amended by repealing subparagraphs (ii) and (iii) and substituting the following subparagraphs:
- (ii) the international transaction log (if required to do so); and
 - (iii) an overseas registry (if required to do so).

30 Unit register must be open for search

Section 26 is amended by adding the following subsection as subsection (2):

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

31 New section 27 substituted

Section 27 is repealed and the following section substituted:

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) 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; 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 following information in relation to units transferred to the Registry from overseas registries 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, including the total quantity of—
 - (A) units transferred from each overseas registry; and
 - (B) each type of unit transferred from each overseas registry; and
 - (k) the following information in relation to units transferred from the Registry to overseas registries 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, including the total quantity of—
 - (A) units transferred to each overseas registry; and
 - (B) each type of unit transferred to each overseas registry; 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
 - (q) the total quantity of units transferred to the general cancellation account during that year; and
 - (r) the total quantity of Kyoto units retired during that year; and
 - (s) the total quantity of units surrendered during that year; and
 - (t) the total quantity of each type of unit surrendered during that year; and
 - (u) 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
 - (v) 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
 - (w) the expiry date of each long-term certified emission reduction unit and each temporary certified emission reduction unit held in the Registry.
- (3) 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).

32 Recovery of fees

- (1) Section 30 is amended by omitting “of the Ministry responsible for the Registry” in each place where it appears.
- (2) Section 30(1) is amended by omitting “Act” and substituting “Part”.

33 Crown or Registrar not liable in relation to searches in certain cases

- (1) The heading to section 30A is amended by omitting “**Crown**” and substituting “**The Crown**”.
- (2) Section 30A(b)(i) is amended by omitting “independent” and substituting “international”.
- (3) Section 30A(b) is amended by inserting the following subparagraphs after subparagraph (i):
 - (ia) an overseas registry; or
 - (ib) a third party; or

34 New heading and sections 30E to 30K inserted

The following heading and sections are inserted after section 30D:

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
 - (c) 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).

- (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 referred to in section 71(2)(b)(ii) that are allocated in accordance with an allocation plan made under section 79 that relates to those units.
- (2) Despite anything in section 18C or 30E, the Registrar may not transfer any New Zealand units to which this section applies to a surrender account or a conversion account until—
- (a) 1 January 2013; or
 - (b) any later date specified in the allocation plan.
- (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:
 - (B) the transfer of units within the unit register:
 - (C) the transfer of units from an overseas registry:

- (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:
- (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:
 - (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, 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:

- (j) prescribing, for the purpose of the definition of overseas registry, overseas registries from which and to which units may be transferred to and from accounts in the Registry:
 - (k) prescribing the units issued by an overseas registry 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, 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:
 - (o) providing for the matters that are contemplated by, or necessary for, giving full effect to this Part and for its due administration.
- (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.
 - (4) Any regulations made under subsection (1) must be consistent with the Convention and the Protocol.

30H Procedure for certain regulations relating to units

- (1) Before making a recommendation under section 30G(1) relating to regulations under section 30G(1)(b)(i), (c), (d), (j) or (k), 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, 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 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), (c), (d), (j), or (k).

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; 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;
 - (ii) prescribed in any country or jurisdiction that are adopted, agreed on, made, or approved in accordance with the Protocol.
- (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 were references to section 30G and all references to the chief executive were references to the Registrar.

30J Signing false declaration with respect to regulations made under section 30G

Every person who signs a declaration that is required under regulations made under section 30G, 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,—
 - (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.

35 New Part 3 heading substituted

The subpart 3 heading above section 31 is repealed and the following heading substituted:

Part 3
Inventory agency

36 Primary functions of inventory agency

Section 32(2)(b)(iii) is amended by omitting “Act” and substituting “Part”.

37 Inventory agency under direction of Minister responsible for inventory agency

- (1) The heading to section 33 is amended by omitting “**responsible for inventory agency**”.
- (2) Section 33 is amended by omitting “responsible for the inventory agency” in each place where it appears.
- (3) Section 33(1) is amended by omitting “Act” and substituting “Part”.

38 New heading substituted

The Part 3 heading and the heading above section 36 are repealed and the following heading is substituted: “*Inspectors*”.

39 Authorisation of inspectors

- (1) Section 36 is amended by omitting “responsible for the inventory agency” in each place where it appears.
- (2) Section 36(1) is amended by omitting “carry out all or any of the powers and duties of an inspector under this Act” and substituting “exercise any or all of the powers of, and carry out any or all of the duties of an inspector under this Part”.
- (3) Section 36(4) is amended by omitting “Act” and substituting “Part”.

40 Power to enter land or premises to collect information to estimate emissions or removals of greenhouse gases

Section 37 is amended by omitting “responsible for the inventory agency” in each place where it appears.

41 Limitation on power of entry under section 37

Section 38 is amended by omitting “responsible for the inventory agency”.

42 New section 45A inserted

The following section is inserted after section 45:

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.

43 Obstructing, hindering, resisting, or deceiving person exercising power under Act

- (1) The heading to section 47 is amended by omitting “Act” and substituting “Part”.
- (2) Section 47(a)(i) is amended by omitting “Act” in each place where it appears and substituting in each case “Part”.
- (3) Section 47(a)(ii) is amended by omitting “Act” and substituting “Part”.

44 Signing false declaration

The heading to section 48 is amended by adding “in respect of regulations made under section 50”.

45 Section 48A repealed

Section 48A is repealed.

46 Reporting

Section 49 is amended by inserting “responsible for the administration of this Act” after “Minister” in the first place where it appears.

47 Regulations

- (1) Section 50(1)(a) is repealed.
- (2) Section 50(1)(c) is repealed.
- (3) Section 50(1)(ca) is repealed.
- (4) Section 50(1)(d) is repealed.

- (5) Section 50(1)(e) is repealed.
- (6) Section 50(1)(f) is repealed.
- (7) Section 50(1)(g) is repealed.
- (8) Section 50(1)(h) is repealed.
- (9) Section 50(1)(i) is amended by omitting “Act” and substituting “Part”.
- (10) Section 50(1)(k) is amended by omitting “Act” and substituting “Part”.
- (11) Section 50(2) and (3) is amended by omitting “responsible for the inventory agency”.
- (12) Section 50 is amended by repealing subsection (5) and substituting the following subsection:
 - (5) Regulations made under subsection (1) or (2) may be made in respect of different persons or classes of persons.

48 New section 51 substituted

Section 51 is repealed and the following section substituted:

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; 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:
 - (ii) prescribed in any country or jurisdiction that are adopted, agreed on, made, or approved in accordance with the Protocol.
- (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 were references to section 50 and all references to the chief executive were references to the inventory agency.

49 Inventory agency must report to Minister responsible for inventory agency on certain matters before certain regulations are made

- (1) The heading to section 52 is amended by omitting “**responsible for inventory agency**”.
- (2) Section 52(1) is amended by omitting “responsible for the inventory agency”.
- (3) Section 52(3) is amended by omitting “responsible for the inventory agency”.
- (4) Section 52(4) is amended by omitting “who is responsible for the inventory agency”.

50 New Parts 4 and 5 inserted

The following Parts are inserted after section 53:

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 or 204 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 or 193 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 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 or 204 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 participant for the purposes of this Act in respect of any obligations, 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 chief executive 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 inspection, without fee, on the Internet site of the department of the chief executive, and in any other form that the chief executive considers 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.
- (2) 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.
- (3) 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 as a—
 - (i) participant in relation to the activity; or
 - (ii) a person engaged in a joint activity in accordance with section 157; or
 - (iii) a 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 chief executive 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 chief executive 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 chief executive 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 chief executive 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 chief executive 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 chief executive must, as soon as practicable after receiving a notice under subsection (1)(a),—
 - (a) enter on a register kept by the chief executive 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 chief executive receives a notice under subsection (1)(a) from a person whose name is already on the register kept in accordance with subsection (3), the chief executive 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.

57 Applications 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 chief executive 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 chief executive 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 chief executive within 10 working days of receiving an account number from the Registrar.

- (4) Following the receipt of an application under subsection (1), the chief executive must register the person in accordance with subsections (5) and (7) if satisfied that the person—
 - (a) 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 chief executive 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.
- (5) The chief executive registers a person by entering on a register kept by the chief executive 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 chief executive 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), 209(2)(a), or 213(2)(a), as the case may require.
- (7) If the chief executive receives an application under subsection (1) in respect of an activity listed in Part 2, 3, 4, or 5 of Schedule 4, then the chief executive must, within 20 working days of receiving the application,—
 - (a) decline the application; or
 - (b) register the applicant under subsection (5), unless the chief executive 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 chief executive must either register the person within 20 working days of receiving the further information or decline the application.
- (8) 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), 209(2)(b), or 213(2)(b).
- (9) If the chief executive 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 applica-

tion, the chief executive 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

- (1) 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 chief executive in accordance with subsection (2).
- (2) An application under subsection (1) must—
 - (a) be in the prescribed form; and
 - (b) be accompanied by the prescribed fee (if any).
- (3) Following receipt of an application under subsection (1), the chief executive 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), 209(3)(a), or 213(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).
- (4) The chief executive 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), 209(3)(b), or 213(3)(b).

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 chief executive as soon as practicable if the person ceases, or will cease, to carry out the activity.
- (2) The chief executive must, after receiving notice under subsection (1), or otherwise being satisfied that the person has ceased to carry out the activity,—
 - (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), 209(3)(a), or 213(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, 211, and 215.

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) an activity; or
 - (b) part of an activity; or
 - (c) a proportion of the emissions from an activity; or
 - (d) a combination of the matters specified in paragraphs (a) to (c).
- (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 not 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 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.

61 Participants must have holding accounts

- (1) A participant must have a holding account for the purpose of—
- (a) surrendering units as required under this Part and Part 5; and
 - (b) receiving New Zealand units to which the participant becomes entitled under this Part or Part 5.

- (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 person—
 - (a) who applies to open a holding account in accordance with section 56(1)(b) or 57(3); and
 - (b) whose name has been entered on a register kept for the purposes of section 56 or 57.

62 Monitoring of emissions and removals

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 chief executive 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 chief executive under section 92; and
- (d) keep records of the data or information and calculations in the prescribed format (if any).

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.
- (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 chief executive.

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.

- (2) If a participant is entitled to receive New Zealand units, the chief executive must notify the Minister of Finance of—
 - (a) the number of New Zealand units to which the participant is entitled; and
 - (b) the details of the participant's holding account.
- (3) As soon as practicable after receiving notification under subsection (2), the Minister of Finance must direct the Registrar to transfer the number of New Zealand units to which the participant is entitled to the participant's holding account.
- (4) Subject to subsection (5), if a participant submits an emissions return to the chief executive containing an assessment of the participant's entitlement to receive New Zealand units, the chief executive must, within 20 working days of receiving the emissions return, notify the Minister of Finance under subsection (2) of the number of New Zealand units contained in the assessment.
- (5) Subsection (4) does not apply if, within 20 working days of the chief executive receiving the emissions return, the chief executive or an enforcement officer has served notice on the participant under section 94 requiring the participant to provide information in respect of any matter contained in the emissions return.

65 Annual emissions returns

- (1) Between 1 January and 31 March in each year, a participant must submit an annual emissions return to the chief executive in respect of each of the activities listed in Schedule 3 or Part 2, 3, 4, or 5 of Schedule 4 that the participant carried out in the immediately preceding year.
- (2) 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) 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.
- (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 30 April, surrender the number of units listed in the participant's assessment under subsection (2)(c)(i).
- (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).

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 chief executive 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(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(d); and
 - (b) in the case where they relate to an activity listed in Part 1 of Schedule 3 or 4, 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—Issuance and allocation of New Zealand units

68 Interpretation

In this subpart,—

determination means a determination made by the Minister under section 82(7)(b)

draft determination means a draft determination made by the Minister under section 82(4)

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 specified in this subpart, and in an allocation plan, for receiving an allocation of New Zealand units free of charge

existing determination means an existing—

- (a) determination; or
- (b) new determination

new determination means a determination made by the Minister under section 84

person includes a person or class of persons or, if the context requires, a person representing a class of persons

revoked determination means an existing determination that has been revoked.

69 Issuance of New Zealand units

- (1) Subject to subsection (2), 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 with 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
 - (iii) the proper functioning of the greenhouse gas emissions trading scheme established under this Act; and
 - (iv) any other matters that the Minister considers relevant; and
 - (c) if there is no subsequent commitment period specified or determined under the Protocol or no successor international agreement to the Protocol, have regard to the following matters:
 - (i) New Zealand's annual emissions for the 5 years (on record) prior to 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
 - (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) make a copy of the direction accessible via the Internet site of the department of the chief executive responsible for the administration of this Act; and
 - (c) present a copy of the direction to the House of Representatives.
- (5) The copies 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 (c).

70 Notification of intention regarding New Zealand units

- (1) The Minister must recommend that the Governor-General make an Order in Council containing notification of the Crown's intentions to issue and sell or allocate free of charge New Zealand units at least 9 months before the end of each of the following periods:
- (a) the first commitment period and each subsequent commitment period (if any); and

- (b) if there is no subsequent commitment period,—
 - (i) the 5-year period commencing on 1 January 2013; or
 - (ii) each subsequent 5-year period after the period specified in subparagraph (i).
- (2) The notification contained in the Order in Council made under subsection (1) must include—
 - (a) the number of New Zealand units that will be issued under section 69; and
 - (b) the time frames for issuance of New Zealand units under section 69; and
 - (c) the intended time frame for any allocation of New Zealand units free of charge, or the sale of New Zealand units and the method of sale.
- (3) A copy of the report under section 160(4) must be presented to the House of Representatives before an Order in Council may be made under this section.
- (4) The Minister must make a copy of any Order in Council made under subsection (1) accessible via the Internet site of the department of the chief executive responsible for the administration of this Act.
- (5) The Crown is not bound by the notification contained in any Order in Council made under subsection (1) to make any decisions in relation to the issuance, sale, or allocation free of charge of New Zealand units.

71 Allocation in respect of pre-1990 forest land

- (1) The Minister must exercise his or her powers under this subpart to ensure that an allocation plan that provides for the matters in this section and section 78(2) is in force for the period from 1 January 2008 to 31 December 2021.
- (2) The matters that an allocation plan must provide for are—
 - (a) an allocation of New Zealand units free of charge to—
 - (i) landowners, or former landowners, of eligible land who are eligible persons; or
 - (ii) a person appointed in accordance with section 72 to hold any New Zealand units allocated in respect of the eligible land covered in paragraph (c)(i)(A); and
 - (b) a total number of New Zealand units available for allocation free of charge under the allocation plan consisting of—
 - (i) 21 million New Zealand units in the period from 1 January 2008 to 31 December 2012, reduced by 1 New Zealand unit for each tonne of emissions that the Minister estimates will result from the activities specified in subsection (5) in that period; and
 - (ii) 34 million New Zealand units in the period from 1 January 2013 to 31 December 2021, reduced by 1 New Zealand unit for each

- tonne of emissions that the Minister estimates will result from the activities specified in subsection (5) in that period; and
- (c) an allocation of New Zealand units free of charge consisting 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 that was transferred to the landowner, or former landowner, of the land—
- (A) after 31 October 2002; or
- (B) prior to 1 November 2002 if, since that date, ownership of any body corporate owning the land has changed in the manner and to the extent specified in the allocation plan:
- (iii) for any hectare of eligible land not covered in subparagraph (i) or (ii), the number of New Zealand units calculated in accordance with the following formula:

$$A = \frac{B - C}{D}$$

where

- A is the number of units for each hectare of eligible land not covered in subparagraph (i) or (ii)
- B is the total number of New Zealand units available for allocation under subsection (2)(b)
- C is the total number of New Zealand units to be allocated in accordance with subparagraph (i) and (ii)
- D is the number of hectares of eligible land not covered in subparagraph (i) or (ii).
- (3) In addition to the matters provided for in subsection (2), an allocation plan—
- (a) must also specify 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)(c)(ii)(B); and
- (b) may specify, for the purposes of subsection (7), a date or event other than the settlement date upon which any or all eligible land is to be treated as transferred for the purposes of this section.

- (4) Despite subsection (2)(c), the 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)(c)(iii).
- (5) For the purposes of subsection 2(b)(i) and (ii), the activities are—
 - (a) deforestation on exempt land; and
 - (b) deforestation of 2 hectares or less of pre-1990 forest land for which no obligation to surrender units is imposed under this Act.
- (6) An allocation plan that provides for the matters in this section may—
 - (a) provide for the New Zealand units referred to in subsection (2)(b)(ii) to be allocated at any time; and
 - (b) specify dates before which some or all of those New Zealand units may not be surrendered or converted by any person.
- (7) For the purposes of this section, eligible land is to be treated as transferred on the settlement date, unless the allocation plan specifies another date or event upon which any or all eligible land is to be treated as transferred.
- (8) For the purposes of this section, **Crown forest licence land** means eligible land subject to a Crown forestry licence under section 14 of the Crown Forest Assets Act 1989.

72 Minister to appoint person to hold certain New Zealand units

- (1) The Minister must, prior to making a determination in respect of eligible land covered by section 71(2)(c)(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) determine—
 - (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) prior to issuing a notice under section 82(1) inviting persons to apply for an allocation of New Zealand units under an allocation plan providing for the matters in section 71, 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 covered by section 71(2)(c)(i)(A) on behalf of the person to be appointed under subsection (1).

73 Allocation to industry

- (1) The Minister must exercise his or her powers under this subpart to ensure that an allocation plan that provides for the matters in this section and section 78(2) is in force for each of the following periods—
 - (a) the first commitment period:
 - (b) each subsequent commitment period, but expiring no later than 31 December 2029:
 - (c) if there is no subsequent commitment period,—
 - (i) the 5-year period commencing on 1 January 2013; or
 - (ii) each subsequent 5-year period after the period specified in subparagraph (i), but expiring no later than 31 December 2029.
- (2) The matters that an allocation plan must provide for are—
 - (a) an allocation of New Zealand units free of charge to persons who—
 - (i) the Minister considers are likely to be trade-exposed; and
 - (ii) meet any tests or thresholds that are specified in the allocation plan; and
 - (iii) in any year or years specified in the allocation plan—
 - (A) are participants in respect of an activity listed in Part 4 of Schedule 3 or Part 4 of Schedule 4, unless the person does not face any obligations under section 63 in respect of the emissions from the activity in any year for which the allocation plan is in force; or
 - (B) as a result of the obligations imposed by this Act on participants who carry out an activity listed in Part 3 of Schedule 3, face increased costs in respect of the person's direct use of coal, natural gas, or geothermal steam, direct combustion of any used oil or waste oil for the purpose of generating electricity or industrial heat, or direct consumption of electricity; and
 - (b) if the allocation plan is in force in any year from 1 January 2010 to 31 December 2018, a total number of New Zealand units available for allocation free of charge under the allocation plan, in each year that the allocation plan is in force, consisting of—
 - (i) 90 New Zealand units for each 100 tonnes of emissions that the Minister is satisfied resulted from the persons specified in paragraph (a)—
 - (A) carrying out any activity listed in Part 4 of Schedule 3 in 2005:
 - (B) directly using any coal, natural gas, or geothermal steam in 2005:

- (C) directly combusting any used oil or waste oil for the purpose of generating electricity or industrial heat in 2005; and
 - (ii) a number of New Zealand units that the Minister is satisfied is sufficient to compensate the persons specified in paragraph (a) for 90% of the electricity cost increase that the Minister estimates those persons would face, due to the obligation imposed by this Act on participants to surrender units, in the period for which the allocation plan is in force, as if those persons purchased and consumed the same amount of electricity per year in that period as those persons did in 2005; and
 - (c) if the allocation plan is in force in any year from 1 January 2019 to 31 December 2029, a total number of New Zealand units available for allocation free of charge under the allocation plan that is equal to eleventwelfths of N in 2019, and then declining in each subsequent year at a linear rate to reach a number equal to one-twelfth of N in 2029, where N equals the total number of New Zealand units available for allocation under paragraph (b) in 2018; and
 - (d) the matters that the Minister must have regard to when considering if a person is likely to be trade-exposed, including (but not limited to)—
 - (i) whether the person competes with a firm or firms that operate from outside New Zealand in respect of—
 - (A) products the person sells into the New Zealand market; or
 - (B) products the person exports into overseas markets; and
 - (ii) if the person does compete with firms that operate from outside New Zealand, whether the person—
 - (A) faces higher costs in respect of the person's emissions than the firm or firms with which the person competes face in respect of their emissions; and
 - (B) is unable to pass-on some or all of the person's costs due to the competition the person faces.
- (3) If, after 31 December 2018, a person becomes eligible for an allocation of New Zealand units in accordance with an allocation plan providing for the matters in this section, the allocation plan may provide for the matters in subsection (2)(c) as if the person had been eligible for an allocation of New Zealand units in accordance with an allocation plan providing for the matters in this section that was in force in 2018.
- (4) Nothing in subsection (3) entitles a person who becomes an eligible person after 31 December 2018 to an allocation of New Zealand units free of charge in any year before the year in which the person becomes an eligible person.

74 Establishment of Innovation Fund

- (1) The Minister must establish a fund (the **Innovation Fund**) for the purpose of facilitating deployment of innovative technology that significantly reduces or avoids, or has the potential to significantly reduce or avoid, greenhouse gas emissions from the industrial sector, or a part of the industrial sector.
- (2) The Innovation Fund consists of the New Zealand units allocated to it in accordance with subsection (4).
- (3) The Minister—
 - (a) must ensure that there is an Innovation Fund for the period from 1 January 2010 to 31 December 2012; and
 - (b) may, following the completion of a review under section 160(1), continue the Innovation Fund for—
 - (i) any subsequent commitment period following the first commitment period; or
 - (ii) if there is no subsequent commitment period following the first commitment period,—
 - (A) the 5-year period commencing on 1 January 2013; or
 - (B) any subsequent 5-year period after the period specified in subsubparagraph (A); and
 - (c) must disestablish the Innovation Fund no later than 31 December 2029.
- (4) An allocation plan—
 - (a) must provide for 150,000 of the New Zealand units available for allocation under the plan in each year from 1 January 2010 to 31 December 2012 to be allocated to the Innovation Fund; and
 - (b) may, if the Innovation Fund is continued after 31 December 2012, provide for any number of New Zealand units available for allocation under the plan to be allocated to the Innovation Fund.
- (5) The Minister may make grants of New Zealand units from the Innovation Fund.
- (6) Grants under subsection (5) must be made available on a contestable basis—
 - (a) to persons who meet the requirements of section 73(2)(a)(i) and—
 - (i) meet the requirements of section 73(2)(a)(iii), but are not receiving an allocation of New Zealand units in accordance with an allocation plan; or
 - (ii) carry out an activity listed in Part 4 of Schedule 3 or Part 4 of Schedule 4, but are not receiving an allocation of New Zealand units in accordance with an allocation plan in respect of that activity; or

- (iii) face cost increases in respect of the matters referred to in section 73(2)(a)(iii)(B), but are not receiving an allocation of New Zealand units in accordance with an allocation plan in respect of those costs; and
 - (b) in accordance with any criteria the Minister considers appropriate.
- (7) If in any year the number of New Zealand units in the Innovation Fund are not fully granted and the Innovation Fund—
- (a) is to continue in the following year, the remaining New Zealand units may be granted under subsection (5) in any subsequent year in which the Innovation Fund is continued; or
 - (b) will not be continued in the following year, the remaining New Zealand units may be made available for allocation in accordance with an allocation plan that applies in that following year.
- (8) In this section, **allocation plan** means an allocation plan providing for the matters in section 73.

75 Allocation to fishing vessel operators

- (1) The Minister must exercise his or her powers under this subpart to ensure that an allocation plan that provides for the matters in this section and section 78(2) is in force for the period from 1 January 2011 to 31 December 2013.
- (2) The matters that an allocation plan must provide for are—
- (a) an allocation of New Zealand units free of charge to persons who—
 - (i) are or were fishing vessel operators in any year or years specified in the allocation plan; and
 - (ii) meet any tests or thresholds that are specified in the allocation plan; and
 - (b) a total number of New Zealand units available for allocation under the allocation plan calculated in accordance with the following formula:

$$A = 0.5 \times B \times 3$$

where—

 - A is the total number of New Zealand units available for allocation under the allocation plan
 - B is the total number of tonnes of emissions that the Minister is satisfied resulted in 2005 from the consumption of obligation fuel by fishing vessels—
 - (a) required to be registered under section 103 of the Fisheries Act 1996; and
 - (b) registered under that section in 2005.
- (3) For the purposes of this section,—

fishing vessel has the same meaning as in section 2(1) of the Fisheries Act 1996

fishing vessel operator means the operator of a fishing vessel that is required to be registered under section 103 of the Fisheries Act 1996

operator, in relation to a fishing vessel, means the person who, by virtue of ownership, a lease, a sublease, a charter, a subcharter, or otherwise, for the time being has lawful possession and control of the fishing vessel.

76 Allocation to agriculture

- (1) The Minister must exercise his or her powers this section and section 78(2) under this subpart to ensure that an allocation plan that provides for the matters in this section and section 78(2) is in force for each of the following periods—
- (a) the subsequent commitment period following the first commitment period (the **second commitment period**):
 - (b) each subsequent commitment period following the second commitment period, but expiring no later than 31 December 2029:
 - (c) if there is no second commitment period,—
 - (i) the 5-year period commencing on 1 January 2013; or
 - (ii) each subsequent 5-year period after the period specified in subparagraph (i), but expiring no later than 31 December 2029.
- (2) The matters that an allocation plan must provide for are—
- (a) an allocation of New Zealand units free of charge to—
 - (i) persons who—
 - (A) meet any tests or thresholds that are specified in the allocation plan; and
 - (B) subject to subsection (3), in any year or years specified in the allocation plan, are participants in respect of an activity listed in Part 5 of Schedule 3 or Part 5 of Schedule 4, or are not participants in respect of an activity listed in Part 5 of Schedule 3, but who farm, raise, grow, or keep ruminant animals, pigs, horses, or poultry for reward or for the purpose of trade in those animals or in animal material or animal products taken or derived from those animals, or who purchase, other than for on-selling, synthetic fertiliser containing nitrogen; or
 - (ii) bodies corporate or trusts representing the persons specified in subparagraph (i)(B); and
 - (b) if the allocation plan is in force in any year from 1 January 2013 to 31 December 2018, a total number of New Zealand units available for allocation free of charge under the allocation plan, in each year that the allo-

cation plan is in force, consisting of 90 New Zealand units for each 100 tonnes of emissions that the Minister is satisfied resulted from the activities listed in Part 5 of Schedule 3 in 2005; and

- (c) if the allocation plan is in force in any year from 1 January 2019 to 31 December 2029, a total number of New Zealand units available for allocation free of charge under the allocation plan that is equal to eleventwelfths of N in 2019, and then declining in each subsequent year at a linear rate to reach a number equal to one-twelfth of N in 2029, where N equals the number of New Zealand units available for allocation under paragraph (b) in 2018.
- (3) Despite subsection (2)(a)(i)(B), an allocation plan may only provide for an allocation of New Zealand units to one or the other, but not both, of the following persons:
- (a) persons who are participants in respect of an activity listed in Part 5 of Schedule 3 or Part 5 of Schedule 4; or
 - (b) persons who are not participants in respect of an activity listed in Part 5 of Schedule 3, but who farm, raise, grow, or keep ruminant animals, pigs, horses, or poultry for reward or for the purpose of trade in those animals or in animal material or animal products taken or derived from those animals, or who purchase, other than for on-selling, synthetic fertiliser containing nitrogen.

77 Other matters with respect to allocation plans

- (1) An allocation plan may not provide for an allocation of New Zealand units free of charge to any person other than a person specified in sections 71 to 76.
- (2) Nothing in this subpart requires—
 - (a) an allocation plan to provide for the allocation free of charge of the total number of New Zealand units available for allocation under the allocation plan; and
 - (b) the Minister, in making a determination, to allocate the total number of New Zealand units available for allocation under an allocation plan unless required to do so by the allocation plan.
- (3) Despite section 71(2)(a), 73(2)(a), 75(2)(a), or 76(2)(a), a draft allocation plan, or an allocation plan,—
 - (a) is not required to specify—
 - (i) the identity of persons who are eligible to receive an allocation of New Zealand units; or
 - (ii) the amount of any person's allocation; and
 - (b) may, in accordance with section 78(2) or 79(2)(b), specify the criteria, methodologies, and other things that the Minister must apply to make a determination specifying—

- (i) the identity of each eligible person; and
- (ii) the amount of each eligible person's allocation.

78 Draft allocation plans

- (1) Before recommending that an allocation plan be issued, the Minister must prepare a draft allocation plan.
- (2) Every draft allocation plan must specify—
 - (a) the period for which the allocation plan will apply; and
 - (b) any tests or thresholds that persons must meet to be eligible for an allocation of New Zealand units; and
 - (c) the criteria and methodologies to be included in the allocation plan that the Minister must apply to determine (if applicable)—
 - (i) the total number of New Zealand units available for allocation; and
 - (ii) the persons who are eligible for an allocation of New Zealand units; and
 - (iii) the total number of New Zealand units allocated to each eligible person; and
 - (iv) the year or years in which each eligible person will receive the New Zealand units allocated to them; and
 - (d) the principal reasons for the inclusion of the criteria and methodologies to be included in the allocation plan, including with reference to—
 - (i) where the allocation plan will provide for the matters specified in section 73 or 76, the general principles specified in section 81; and
 - (ii) where a review has been completed under section 160(1), any relevant recommendations of the most recently completed review; and
 - (e) 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 free of charge; and
 - (ii) enable the Minister to verify that the person received the correct allocation of New Zealand units free of charge under the allocation plan; and
 - (f) in relation to an eligible person who receives an allocation of New Zealand units,—
 - (i) the records, or the kind 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
 - (g) the policies, procedures, and provisions to be applied by the Minister under the allocation plan.
- (3) The Minister must ensure that—
- (a) public notice is given of any draft allocation plan; and
 - (b) the draft 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 the Act and at such other places as the Minister considers appropriate.
- (4) The notice of a draft allocation plan given under subsection (3) must specify—
- (a) how a hard copy of the draft allocation plan may be obtained; and
 - (b) that any person may make a submission on the draft allocation plan, how submissions may be made, and by what date (which must be no earlier than 40 working days after the date on which notice is given).
- (5) If any submission is made on the draft allocation plan under subsection (4), the chief executive responsible for the administration of this Act must, after the expiry of the time for making submissions, prepare for the Minister a report that contains recommendations in respect of the submissions.
- (6) The Minister must consider the report and recommendations made under subsection (5) and may make any changes to the draft allocation plan that the Minister thinks fit.

79 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.
- (2) The allocation plan must—
- (a) specify the matters set out in section 78(2); and
 - (b) incorporate any changes made to the draft allocation plan under section 78(6); and
 - (c) be presented to the House of Representatives as soon as practicable after it is issued, along with the report provided to the Minister under section 78(5) and any of the Minister's decisions on the recommendations contained in the report.
- (3) An allocation plan providing for the matters in—
- (a) section 71 comes into force on the day after it is presented to the House of Representatives;
 - (b) section 73, 75, or 76 comes into force 15 sitting days after it is presented to the House of Representatives unless the House resolves, in that period, to disapply the allocation plan.

- (4) If Parliament is dissolved or expires before the end of the period of sitting days within which the House of Representatives must resolve to disapply an allocation plan under subsection (3)(b), and the House has not, by that time, resolved to disapply the allocation plan, then the allocation plan comes into force on the day the House is dissolved or expires.

80 Correction and publication 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 78, recommend that the Governor-General revoke that allocation plan and replace it with a corrected allocation plan.
- (2) A corrected allocation plan—
- (a) comes into force at the time it is issued; and
 - (b) must, for advisory purposes, be presented to the House of Representatives as soon as practicable after it is issued; and
 - (c) to avoid doubt, may not be disapplied by the House of Representatives under section 79(3)(b).
- (3) The Minister must, as soon as practicable after an allocation plan or a corrected allocation plan comes into force, ensure that—
- (a) the allocation plan or corrected 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 the Act; and
 - (b) the allocation plan or corrected allocation plan is published in whatever other form the Minister considers appropriate; and
 - (c) in respect of an allocation plan, the report provided to the Minister under section 78(5) is published in whatever form the Minister considers appropriate, along with any of the Minister's decisions on the recommendations contained in the report; and
 - (d) in respect of a corrected allocation plan, a summary of the corrections 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 the Act.
- (4) An allocation plan or corrected allocation plan is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but it is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

81 Content of criteria and methodologies in allocation plans

The Minister must, when considering the criteria and methodologies to be included in any draft allocation plan or allocation plan providing for the matters contained in sections 73 and 76, have regard to the following general principles—

- (a) the allocation of New Zealand units free of charge under any allocation plan should lead to the avoidance of—
 - (i) economic regrets:
 - (ii) significant, regionally-concentrated job losses:
 - (iii) perverse behavioural incentives, including with respect to decisions about investment and output levels:
- (b) it is desirable to treat firms or individuals who are intending to begin operating within a sector or industry (**new entrants**) in a similar manner, with respect to the allocation of New Zealand units under any allocation plan, as firms or individuals who are already operating within that sector or industry (**incumbents**) and who are intending to grow their operations:
- (c) criteria and methodologies should be included in an allocation plan that provide as much certainty as practicable about the number of New Zealand units to be allocated under the allocation plan and the number to be allocated to each person:
- (d) it is desirable to treat firms or individuals that are in the same sector or industry in a similar manner with respect to any allocation of New Zealand units free of charge if the firms or individuals have a similar degree of trade exposure:
- (e) the application of any criteria or methodologies included in an allocation plan, and the application of the allocation plan more generally, should minimise administrative and compliance costs as much as practicable:
- (f) criteria and methodologies to be included in an allocation plan should ensure that firms and individuals considered to be trade-exposed only receive New Zealand units free of charge in respect of the parts of their business operations that are involved in the production of goods that are trade-exposed:
- (g) any other general principles that the Minister considers appropriate.

82 Determinations made in accordance with allocation plan

- (1) As soon as practicable after an allocation plan is issued and is in force for a period specified in section 71(1), 73(1), 75(1), or 76(1), 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 Minister must ensure that a notice given under subsection (1) specifies—
 - (a) that the person must supply to the Minister the data and information, or the kind of data and information, specified in the allocation plan; and
 - (b) how the data and information are to be supplied; and

- (c) the date by which the data and information must be supplied (which must be no earlier than 40 working days after the date on which notice is given); and
 - (d) that the data and information supplied is subject to the Official Information Act 1982.
- (3) Despite anything in this subpart, or in any allocation plan,—
- (a) a person must respond to a notice given under subsection (1) in order to receive an allocation of New Zealand units under any applicable allocation plan; and
 - (b) the Minister is not under any duty to make a determination in favour of any person who fails to respond to the notice within the period specified.
- (4) Following the expiry of the time specified in a notice given under subsection (1) for the supply of data and information, the Minister must apply the criteria and methodologies specified in the allocation plan to make a draft determination specifying—
- (a) the total number of New Zealand units available for allocation under the allocation plan; and
 - (b) the identity of each eligible person; and
 - (c) the total number of New Zealand units allocated under the allocation plan to each eligible person; and
 - (d) the year or years in which each eligible person will receive the New Zealand units allocated to them.
- (5) After making a draft determination, the Minister must notify each eligible person specified in the draft determination, and every person who responded to the notice given under subsection (1) who is not specified as an eligible person in the draft determination,—
- (a) of the draft determination; and
 - (b) if the person is not specified in the draft determination as an eligible person, of the reasons for the person not being specified as an eligible person; and
 - (c) that the person has an opportunity to identify any errors, mistakes, or miscalculations that have been made in the application of the criteria and methodologies to make the draft determination; and
 - (d) if the person identifies any errors, mistakes, or miscalculations, that the person may provide the Minister with information concerning what the person considers should be the correct application of the criteria and methodologies; and
 - (e) of the date by which the person must supply the information (which date must not be earlier than 20 working days after the date on which notice is given).

- (6) The Minister may consult further with any person the Minister thinks fit either before or after the expiry of the period specified in subsection (5)(e) for providing information.
- (7) Taking into account any information supplied under subsection (5), and any consultation under subsection (6), the Minister must—
 - (a) make a new draft determination under subsection (4); or
 - (b) make a determination of the matters specified in subsection (4).
- (8) As soon as practicable after making a determination under subsection (7)(b), the Minister must—
 - (a) publish the determination in the *Gazette*; and
 - (b) make the determination accessible via the Internet site of the department of the chief executive responsible for the administration of this Act; and
 - (c) provide for the transfer of New Zealand units to each eligible person in accordance with the determination.
- (9) A determination continues in force until—
 - (a) the allocation plan in accordance with which the determination is made expires; or
 - (b) the determination is replaced by a new determination made in accordance with section 84; or
 - (c) one of the conditions in paragraph (a) or (b) is met, even if the allocation plan in accordance with which the determination is made is revoked and replaced with another allocation plan.

83 Minister may require further information after determination made

- (1) The Minister may, after making a determination, require the following persons to supply the records, data or information, or the kind of records, data and information, specified in the applicable allocation plan, in the form specified,—
 - (a) persons who have been transferred New Zealand units in accordance with the determination; and
 - (b) persons who have not been transferred New Zealand units in accordance with the determination, but who have applied to the Minister for an allocation of New Zealand units in accordance with an allocation plan; and
 - (c) persons who have previously been transferred New Zealand units, but who are not eligible to receive a further transfer of New Zealand units, in accordance with the determination.
- (2) Any requirement for the supply of records, data, or information under subsection (1) must be made—

- (a) by notice to the person (which notice must specify that the records, data, or information supplied are subject to the Official Information Act 1982); and
 - (b) in accordance with any relevant policies, procedures, and provisions specified in the applicable allocation plan.
- (3) A person who—
- (a) receives a notice issued under subsection (2)(a) must supply the records, data, or information requested within the time frame specified in the notice; and
 - (b) fails to respond within the specified time frame for supply of records, data, or information under subsection 2(a) may—
 - (i) not receive any further allocation of New Zealand units until the person supplies the information; and
 - (ii) commit an offence under section 131(1)(a) or 133(1)(d) as if the reference to the chief executive in those sections were to the Minister, and the reference to section 94 in section 131(1)(a) was to this section.

84 New determination made in accordance with allocation plan

- (1) The Minister may (but is not required to) revoke and replace any existing determination with a new determination at any time if—
- (a) the allocation plan under which the existing determination was made has been revoked and replaced with a new allocation plan; or
 - (b) the existing determination has resulted, or will result, in a person receiving an incorrect allocation owing to—
 - (i) an error in the application of the criteria and methodologies specified in the applicable allocation plan; or
 - (ii) the person providing altered, false, incomplete, or misleading information in response to a notice given under section 82(1) or (5) in relation to the existing determination; or
 - (c) a person who is specified as an eligible person under the existing determination is no longer an eligible person; or
 - (d) there has been a change in the circumstances of a person who is specified as an eligible person under the existing determination that, if taken into account, would increase or decrease that person's entitlement to an allocation; or
 - (e) a person who is not specified as an eligible person under the existing determination has—
 - (i) reasonable grounds to believe that he or she is an eligible person; and

- (ii) applied to the Minister for an allocation in accordance with the applicable allocation plan.
- (2) However, the Minister may only make a new determination in accordance with an allocation plan that provides for the matters in section 71 if subsection (1)(a) or (b) applies.
- (3) In making a new determination, the Minister must,—
 - (a) if the Minister considers that he or she has sufficient information to make the new determination of the matters specified in section 82(4), comply with subsection (4); or
 - (b) if the Minister considers that he or she does not have sufficient information to make the new determination of the matters specified in section 82(4), follow the process in section 82, except that the reference to—
 - (i) 40 working days in section 82(2)(c) must be read as 20 working days; and
 - (ii) 20 working days in section 82(5)(e) must be read as 10 working days.
- (4) If subsection (3)(a) applies, the Minister must—
 - (a) give notice of the matters specified in section 82(5) to the following persons:
 - (i) persons specified as eligible persons under the existing determination who would, once the new determination replaces the existing determination, receive greater or fewer New Zealand units than if the new determination did not replace the existing determination; and
 - (ii) persons not specified as eligible persons under the existing determination whom the new determination specifies as eligible persons; and
 - (b) comply with section 82(6) to (8) as if the notice given under paragraph (a) had been given under section 82(5).
- (5) If the Minister has provided notice of the matters specified in section 82(5) in accordance with subsection (4), the reference to 20 working days in section 82(5)(e) must be read as 10 working days.
- (6) Any new determination made in accordance with subsection (3)—
 - (a) may specify all of the matters specified in section 82(4), and may—
 - (i) specify the correct allocation of a person whose allocation is specified incorrectly in the existing determination; or
 - (ii) not specify as an eligible person a person who was specified as an eligible person under the existing determination but is no longer an eligible person; or

- (iii) increase or decrease a person's allocation owing to a change in the person's circumstances since the existing determination was made; or
 - (iv) specify as an eligible person a person who was not specified as an eligible person under the existing determination; and
- (b) applies subject to section 85.
- (7) Despite anything in this section, the Minister may make a new determination that corrects any minor mistakes or defects in an existing determination without complying with section 82(1) to (6).

85 Effect of new determination

- (1) If the Minister makes a new determination in accordance with section 84, the new determination has the effect of immediately revoking and replacing the existing determination.
- (2) A new determination made in accordance with section 84 applies from the date it is made, and, subject to subsections (5) and (6), does not change or otherwise affect any transfer of New Zealand units made to a person in accordance with any revoked determination before that date.
- (3) If a revoked determination incorrectly specified a person's allocation, a new determination may increase or decrease the number of New Zealand units the person is to receive by the difference between the number of New Zealand units that the person—
 - (a) received under the revoked determination; and
 - (b) would have received if the revoked determination had specified the person's correct allocation.
- (4) If the circumstances of a person specified as an eligible person under a revoked determination changed while that determination was in force, and the person received greater or fewer New Zealand units than the person's entitlement as a result, then a new determination may increase or decrease the number of New Zealand units the person is to receive by the difference between the number of New Zealand units that the person—
 - (a) received under the revoked determination; and
 - (b) should have received, given the person's change in circumstances.
- (5) If a person specified as an eligible person under a revoked determination is not specified as an eligible person under a new determination, but the person received greater or fewer New Zealand units than they were entitled to under the revoked determination, then,—
 - (a) if the person received too few New Zealand units, the new determination may specify that the person is to receive a further allocation of New Zealand units equal to the difference between the number of New Zealand units the person received under the revoked determination and the num-

- ber of New Zealand units that the person would have received if the revoked determination had specified the person's correct allocation; or
- (b) if the person received too many New Zealand units, the chief executive may give a notice to the person, under section 125(1), specifying the number of New Zealand units the person received that the person was not entitled to, and requiring the person to transfer that number of New Zealand units in accordance with section 125(2).
- (6) If a new determination shows that a person received more New Zealand units than the person was entitled to receive under a revoked determination, and the person's incorrect allocation was due to the person providing altered, false, incomplete or misleading information in response to a notice issued under section 82(2) or 82(5), then the chief executive may give a notice to the person under section 125(1) specifying the number of New Zealand units the person received that the person was not entitled to, and requiring the person to repay that number of New Zealand units in accordance with section 125(2).

86 Balance of units at end of true-up period or other balance date

- (1) By the end of the true-up period, the Minister must ensure that the Crown holds, in any Crown holding account in the Registry, or in any retirement or surrender account, a number of Kyoto units equal to the number of New Zealand units issued into a Crown holding account during the first commitment period but not including New Zealand units that are, during the first commitment period,—
- (a) transferred to a conversion account in accordance with section 30E; or
- (b) allocated to pre-1990 forest land owners in accordance with section 71(2)(b)(ii) and that have not been transferred to a cancellation account; or
- (c) transferred to a cancellation account.
- (2) Subsection (3) applies if New Zealand has received, or if the Minister expects New Zealand to receive, units under—
- (a) the Protocol during a subsequent commitment period; or
- (b) a successor international agreement.
- (3) If this subsection applies the Governor-General may, by Order in Council made on the recommendation of the Minister, specify a date by which the Crown must hold, in any Crown holding account in the Registry, or in any retirement or surrender account, a number of Kyoto units or approved overseas units received under any international agreement as calculated under subsection (4).
- (4) The number of Kyoto or approved overseas units held in accordance with subsection (3) must be equal to the number of New Zealand units issued into a Crown holding account up to the date specified in the order but not including New Zealand units that up to the date specified in the order are—

- (a) transferred to a conversion account in accordance with section 30E; or
 - (b) allocated to pre-1990 forest land owners in accordance with section 71(2)(b)(ii) and that have not been transferred to a cancellation account and are held subject to section 71(6)(b); or
 - (c) transferred to a cancellation account.
- (5) If an order is made under subsection (3), the Minister must ensure that the Crown holds the required number of units by the date specified in the order.
- (6) For the purposes of subsection (1), **true-up period** means the 100 days, beginning on a date determined by the Conference of the Parties (acting as the Meeting of the Parties to the Protocol), providing Parties with an additional period for fulfilment of their obligation under Article 3.1 of the Protocol.

Subpart 3—Chief executive

General administrative provisions

87 Functions of chief executive

- (1) The functions of the chief executive 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; and
 - (c) approve the use of unique emissions factors by participants in accordance with section 91; and
 - (d) give notice to the Minister of Finance of participants' entitlements to receive New Zealand units for removal activities; and
 - (e) ensure participants comply with this Part and Part 5 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.
- (2) The chief executive must comply with any direction that the Minister gives under section 88(1).

88 Directions to chief executive

- (1) The Minister may give general directions to the chief executive in relation to the chief executive's exercise of powers and performance of functions under this Part, Part 5, or any regulations made under this Part or Part 5.
- (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 department of the chief executive; and
 - (c) present a copy of the direction to the House of Representatives.

89 Chief executive to publish certain information

- (1) The chief executive 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 subsection (3), 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; or
 - (ii) surrender or repay units under section 65(4), 118(5), 123(3) or (6), 125, 189, 191, or 193; 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 free of charge under any allocation plan.
- (2) The chief executive—
- (a) must publish the information specified in subsection (1) by 30 June in each 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 chief executive considers appropriate.
- (3) The chief executive is not required to publish the information required under subsection (1)(e) in respect of an activity if the chief executive is satisfied that publishing the information would result in the disclosure of a participant's individual emissions, unless—
 - (a) the participant to whom the information relates has consented to the publication of the information; or
 - (b) the information is already in the public domain.

90 Chief executive may prescribe form of certain documents

- (1) The chief executive may, for the purposes of this Part and Part 5, 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
 - (c) the manner in which any application, return, information, or other document must be submitted or notified under this Part or Part 5 if this is not otherwise prescribed in regulations.
- (2) The chief executive must publish any form or format prescribed under subsection (1) via the Internet site of the department of the chief executive.
- (3) The production by the chief executive 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 chief executive prescribes an electronic form or format under subsection (1), the chief executive 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 chief executive may approve the use by a participant of a unique emissions factor when calculating emissions or removals from an activity under section 62(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 chief executive 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 chief executive 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 chief executive approves the use of a unique emissions factor under subsection (1), the chief executive 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 chief executive has approved the participant to use when calculating emissions or removals for the activity.

92 Recognition of verifiers

- (1) The chief executive 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) 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 chief executive 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 chief executive may appoint 1 or more persons as enforcement officers to exercise all or any of the powers and perform the functions conferred on enforcement officers under this Part.
- (2) A person appointed under subsection (1) must be employed by the chief executive under the State Sector Act 1988.
- (3) The chief executive must supply an enforcement officer with a warrant of authorisation that clearly states the powers and functions of the enforcement 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) To avoid doubt, if the chief executive delegates the appointment power specified in subsection (1) to another chief executive under section 41 of the State Sector Act 1988, subsection (2) applies as if the reference to the chief executive were a reference to the chief executive to whom the power specified in subsection (1) is delegated.

94 Power to require information

- (1) 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; or
 - (b) ascertaining whether the chief executive should exercise any powers under this Part or Part 5.
- (2) The information required to be provided under subsection (1) must,—
 - (a) if required by 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 chief executive or 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 chief executive may require a person to—
 - (a) appear before 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 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 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 chief executive, if the chief executive 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 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 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 by chief executive or District Court Judge

The chief executive may pay, or a District Court Judge may order the chief executive to pay, to any person who has appeared before the chief executive or an enforcement officer under section 95 or the District Court Judge under section 96, out of money appropriated by Parliament for the purpose, the sum that in the chief executive's or 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, any enforcement officer, and any other person who performs functions or exercises powers of the chief executive or an enforcement officer under this Part and Part 5; and
 - (b) at the time during which, and any time after which, those functions are performed or those powers are exercised.
- (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; and
 - (b) may 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
 - (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 Protocol.
- (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 from—
- (a) providing or publishing general guidance in relation to the operation of this Part and Part 5; 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
 - (c) providing information to any person about whether any forest land is considered by the chief executive to be pre-1990 forest land or post-1989 forest land, or has been declared to be exempt land by the chief executive.

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 and Part 5.
- (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.
- (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 chief executive, is satisfied that there are reasonable grounds to believe that there are in or on or under or over any land, premises, dwellinghouse, 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) 14 working days after 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 28 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 member of the police.
- (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

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.

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 chief executive 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 (c) in respect of a particular matter specified in the person's application;
 - (d) any other matters prescribed in regulations made under section 168(1)(b).
- (2) 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).

- (3) The chief executive may request any further information from an applicant that the chief executive considers necessary to assist in the consideration of the application.

108 Matters in relation to which chief executive may decline to make emissions rulings

- (1) The chief executive may not make an emissions ruling with respect to a provision that authorises or requires the chief executive to—
- (a) impose or remit a penalty; or
 - (b) inquire into the correctness of any return or other information supplied by any person; or
 - (c) prosecute any person; or
 - (d) recover any debt owing by any person.
- (2) The chief executive may decline to make an emissions ruling if—
- (a) the chief executive 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 chief executive 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 chief executive before the date an assessment or amendment is made); or
 - (g) in the chief executive's opinion—
 - (i) the chief executive has insufficient information to make the ruling; or
 - (ii) it would be unreasonable to make a ruling in view of the resources available to the chief executive.

109 Making of emissions rulings

- (1) The chief executive must make an emissions ruling regarding the matter in respect of which a ruling is sought under section 107 as soon as practicable after the receipt of—

- (a) a properly completed application for a ruling; and
 - (b) all information that the chief executive considers relevant to the consideration of the application, including information requested under section 107(3).
- (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 chief executive thinks fit.
- (4) Subsection (1) is subject to section 108.

110 Notice of emissions rulings

The chief executive 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 chief executive may, by notice, require an applicant to satisfy the chief executive, within 20 working days after receipt of the notice, and in a manner that the chief executive 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 chief executive of changes relevant to or failure to comply with emissions rulings

- (1) A person must, as soon as practicable, notify the chief executive 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 chief executive.
- (2) A person who has obtained an emissions ruling under section 109 must, as soon as practicable, notify the chief executive 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 chief executive may amend an emissions ruling to correct any error that the chief executive is satisfied is contained in the ruling.
- (2) The chief executive 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 chief executive 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 chief executive

- (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 after the date on which notice of the ruling or decision is given, appeal to a 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.
- (2) If the chief executive makes an emissions ruling under section 109,—
- (a) the ruling applies to the matter in relation to which the ruling was sought; and
 - (b) if the applicant complies with the ruling, the chief executive must apply this Act to that matter in accordance with the ruling.
- (3) This section is subject to sections 113 and 114 and any decision of the District Court under section 115(2).

117 Chief executive 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 chief executive may, after making an emissions ruling, publish information that relates to the ruling.
- (2) The chief executive 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 chief executive 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:
 - (c) the executors or administrators of a deceased participant:
 - (d) a participant who has become bankrupt or has been put into liquidation.
- (2) The chief executive 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 is about to—
 - (i) cease carrying out an activity listed in Schedule 3 or 4 in relation to which the person is a participant;
 - (ii) 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.
- (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 for the period specified by the chief executive, or if the return is made under subsection (3), 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).

119 Power to extend date for emissions returns

The chief executive 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 before the date upon which the emissions return is due; and
- (b) the chief executive is satisfied that the participant is unable to submit the required emissions return by the due date.

120 Amendment to emissions returns by chief executive

Subject to section 127, if the chief executive is satisfied that the information contained in an emissions return is incorrect, the chief executive may, at any time, amend the emissions 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 chief executive thinks fit.

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 chief executive 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 chief executive 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 chief executive makes an amendment under section 120 or an assessment under section 121, the chief executive 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).
- (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 90 days after the date of the notice under subsection (1).
- (4) If the amendment shows that a participant has surrendered too many units, the chief executive must, within 20 working days after 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 chief executive must notify the Minister of Finance under section 64(2) of the entitlement.
- (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 90 days after 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 chief executive.
- (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 chief executive is not required to meet the time frame in subsection (4) if consultation under section 124(6) on the units to be reimbursed makes this impracticable.

124 Reimbursement of units by chief executive

- (1) If the chief executive is required to arrange for the reimbursement of units to a person under section 123(4), 126(2), 138(2), or 189(7), the chief executive may

- satisfy the requirement by giving notice to the Minister of Finance under subsection (2) or (4) in relation to the transfer of units to the person.
- (2) If the chief executive wishes to arrange reimbursement of New Zealand units or approved overseas units to a person, the chief executive must notify the Minister of Finance of—
 - (a) the number of New Zealand units or approved overseas units to be reimbursed to the person from the units surrendered or repaid by that person; and
 - (b) the details of the person's holding account.
 - (3) As soon as practicable after receiving notification under subsection (2), the Minister of Finance must direct the Registrar to transfer the New Zealand units or approved overseas units from the appropriate surrender account or Crown holding account to the person's holding account.
 - (4) If the chief executive wishes to arrange reimbursement of Kyoto units to a person, the chief executive must notify the Minister of Finance of—
 - (a) the number and type of Kyoto units to be reimbursed to the person; and
 - (b) the details of the person's holding account.
 - (5) As soon as practicable after receiving notification under subsection (4), the Minister of Finance must direct the Registrar to transfer the applicable number and type of Kyoto units from a surrender account or a Crown holding account to the person's holding account.
 - (6) The chief executive 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 chief executive 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 Crown account 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.

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 chief executive 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 chief executive under subsection (2) is suspended pending the outcome of any appeal filed by the chief executive 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—
- (a) any section except section 189 or 193, the chief executive 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, 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, the chief executive 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 chief executive 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 chief executive 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.

128 Amendments and assessments made by electronic means

Any amendment or assessment made by the chief executive 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 chief executive; and
- (b) is not invalid by virtue of the fact that it is made automatically by such means.

Subpart 4—Offences and penalties

129 Strict liability offences

- (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); or
 - (b) without reasonable excuse,—
 - (i) fails to notify the chief executive 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
 - (iii) fails to keep emissions records as required under section 67; or
 - (iv) fails to notify the chief executive of a matter that is required to be notified under section 112; or
 - (v) fails to notify the chief executive of the transfer of any post-1989 forest land when required to do so under section 192 or 193.
- (2) Every person who is convicted of an offence against subsection (1) is liable on summary 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 summary 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 chief executive or an enforcement officer when required to do so under section 94; or
- (b) fails to appear before the chief executive 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 summary 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); or
- (d) knowingly fails to submit an emissions return when required to do so under section 65, 118, 189, 191, or 193; or
- (e) knowingly fails to keep records as required under section 67; or
- (f) knowingly provides altered, false, incomplete, or misleading information (including emissions returns) to the chief executive or any other person in respect of any matter in this Part or Part 5; or
- (g) wilfully obstructs, hinders, resists, or deceives a person exercising a power conferred on that person under this Part or Part 5; 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 summary 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
 - (c) fails to keep records as required under section 67; or
 - (d) fails to provide information to the chief executive or any other person when required to do so under this Part or Part 5; or
 - (e) provides altered, false, incomplete, or misleading information (including emissions returns) to the chief executive or any other person in respect of a matter in this Part and Part 5.
- (2) Every person who commits an offence against subsection (1) is liable on conviction on indictment 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
 - (c) a person is required under section 125 to repay units transferred in error.
- (2) 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 chief executive 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 chief executive 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 chief executive, 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(3) 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 chief executive in a court of competent jurisdiction.

135 Reductions in penalty

- (1) The chief executive 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.
- (2) The chief executive may reduce the excess emissions penalty imposed by 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 chief executive 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 chief executive 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 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 against section 132(1)(c) to (f) or 133 in relation to that period.
- (2) If this section applies, the person is liable, in addition to any penalty imposed in respect of the offence, to—
 - (a) surrender a number of units equivalent to the number of units determined by the chief executive 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 surrender under paragraph (a).
- (3) If a person is liable under subsection (1), the chief executive must give a notice to the person that—

- (a) sets out the—
 - (i) number of additional units that the person is required to surrender; and
 - (ii) amount of the excess emissions penalty to which the person is liable; and
 - (b) requires the person to surrender the additional units and pay the penalty within 90 days after the date of the notice; and
 - (c) advises that, unless both the units are surrendered 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 surrender units or 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 chief executive under section 134.
- (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 chief executive in a court of competent jurisdiction.

137 Interest for late payment

- (1) This section applies if a person—
- (a) 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
 - (b) 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
 - (c) is required to surrender units and pay an excess emissions penalty under section 136; or
 - (d) does not comply, or comply in full, with the requirement to surrender or repay units and to pay the penalty by the relevant date.
- (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 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 associ-

- ated requirement to surrender or repay units (or to pay any associated debt under section 159) has not been met in full.
- (4) Despite anything in this section, the chief executive may remit any amount of interest that has accrued under this section, if the chief executive is satisfied that—
- (a) the failure of the person to comply with the requirement to surrender or repay units and pay the penalty in full arises as a result of an event or 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 chief executive'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 chief executive may remit part of an amount of interest that has accrued under this section if the chief executive 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 chief executive 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, 136, or 137, and the obligation to 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 chief executive, and any units not required to be surrendered must be reimbursed in accordance with the procedure specified in section 124.
- (3) However, any obligation on the chief executive under subsection (2) is suspended pending the outcome of any appeal filed under section 146.

- (4) The chief executive 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 chief executive; and
- (b) ends on the day on which the relevant penalty is refunded by the chief executive; 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).

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

Despite section 14 of the Summary Proceedings Act 1957, an information for an offence against—

- (a) section 131 or 132(a), (b), (g), (h), or (i) may be laid at any time within 2 years from the time when the matter of the information arose:
- (b) section 129, 130, or 132(c) to (f) may be commenced at any time within 7 years from the time when the matter of the information arose.

143 Evidence in proceedings

- (1) In any proceedings for an offence against this Part or Part 5, 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 the chief executive, or by a delegate of the chief executive, 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, 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 chief executive under a provision in this Part or Part 5 who is dissatisfied with the decision may, by notice to the chief executive within the period of 30 days after receiving notice of the decision, or within any further period that the chief executive allows, request the chief executive to review the decision.
- (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 chief executive may require the person making the request for review to supply information additional to that contained in the request.
- (4) Following a review, the chief executive may confirm, revoke, or vary the decision in the manner that the chief executive thinks fit.
- (5) The decision requested to be reviewed remains valid unless and until altered by the chief executive.
- (6) The chief executive 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 chief executive 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 chief executive makes under section 90 or of the chief executive 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 a District Court if affected by a decision of the chief executive 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 chief executive

- (1) This section applies if this Act requires the chief executive to give a notice to a person.
- (2) If this section applies, the chief executive—
 - (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 chief executive complies with the Electronic Transactions Act 2002;
 - (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 chief executive 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 chief executive

- (1) This section applies if this Act requires a person to give a notice to the chief executive.
- (2) If this section applies, the person must—
 - (a) give the notice in writing; and
 - (b) may—
 - (i) give the notice to the office of the chief executive's department designated by the chief executive by notice in the *Gazette*;
 - (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 the Electronic Transactions Act 2002;
 - (C) post to the post office box number for the office.
- (3) A notice given by post under subsection (2)(b)(ii)(C) 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.
- (3) An election under subsection (1) must be made by giving notice to the chief executive 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 specified in the notice and this Part and Part 5; 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 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 consolidated group may become entitled in respect of any removal activity listed in the notice.
- (5) The chief executive must acknowledge the formation of a consolidated group by notice to all members of the group given within 1 month after the chief executive'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 as being members of a consolidated group,—
- (a) if notice of the formation of the group is received by the chief executive by 30 September in any year, from the beginning of the following year:
 - (b) if notice of the formation of the group is received by the chief executive after 30 September in any year, from the beginning of the year following the next year.
- (7) To avoid doubt, a participant may be a member of more than 1 consolidated group in relation to different activities.

151 Changes to consolidated groups

- (1) 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 chief executive in a form that the chief executive 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 chief executive 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 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 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 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 specified in the notice.
- (3) The chief executive 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 chief executive's receipt of a notice under subsection (1).
- (4) If a participant has elected under subsection (1) to join a consolidated group, that participant must be treated for the purposes of this Part or Part 5 as being a member of that consolidated group,—
 - (a) if notice of the election to join the group is received by the chief executive by 30 September in any year, from the beginning of the following year:
 - (b) if notice of the election to join the group is received by the chief executive after 30 September in any year, from the beginning of the year following the next year.
- (5) 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 chief executive of the notice, or from any later date that may be specified in the notice.

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 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 chief executive, in a form that the chief executive 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 chief executive 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 chief executive.
- (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.
- (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 118 in respect of a participant 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.

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 any activity listed in Part 1 of Schedule 4 carried out by a member in a year; 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.

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 chief executive in a form that the chief executive 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, unless the entity is the nominated entity; or

- (d) the entity ceases to be the nominated entity and is not a participant; 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, with effect from the date of receipt by the chief executive of the notice of election to cease to be a member of the consolidated group; 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 chief executive of the notice under section 152(3) notifying that the entity has ceased to be the nominated entity for the 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 after that liquidation, or within such further period as the chief executive may allow, the other entities in the consolidated group have selected another nominated entity and notified the chief executive 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 consolidated group that ceases to have a nominated entity, must as soon as practicable give notice to the chief executive of this change of circumstances.
- (5) The chief executive 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 chief executive receiving a notice under—
 - (i) subsection (1)(a); or
 - (ii) section 152(3); or
 - (b) the chief executive becoming aware that subsection (1)(b) or (e) applies; or

- (c) the member being removed from the register of participants under section 58 or 59.

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.

157 Joint activities

- (1) This section applies where and to the extent that any 2 or more persons jointly carry out an activity listed in Schedule 3 or 4, including (but not limited to) in partnership, under an unincorporated joint venture, as trustees of a trust, or through joint ownership of land.
- (2) If this section applies, the persons who carry out the activity—
 - (a) are together the participant in respect of an activity listed in Schedule 3 or may together register as the participant in relation to an activity listed in Schedule 4; and
 - (b) are jointly and severally liable for the obligations of a participant in respect of the activity and are jointly entitled to any benefits of a participant resulting from the activity; and
 - (c) may, if there are 25 or more persons (other than trustees) who jointly carry out an activity that relates to owning land, be described on the register of participants under section 56 or 57 in a manner prescribed in regulations.
- (3) To avoid doubt, this section does not apply to persons who jointly carry out an activity listed in Schedule 3 but would not if they carried out that activity individually be a participant under section 54(1)(a).

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.
- (4) For the purposes of this section, **public work** has the same meaning as in section 2 of the Public Works Act 1981.

159 Chief executive must surrender or repay units for person who is in default or insolvent

- (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 in relation to the units; or
 - (b) is a participant and enters into an insolvency process.
- (2) If this section applies the chief executive must purchase and surrender on the person's behalf, or transfer to the designated Crown holding account on behalf of the person required to repay units, any units that—
 - (a) the person has failed to surrender or repay after 1 year; or
 - (b) the insolvent participant would be required to surrender or repay under any other provision of this Act.
- (3) The cost of purchasing units, and any administrative costs incurred in their surrender or repayment under subsection (2), constitutes an unsecured debt to the Crown and is recoverable by the chief executive in a court of competent jurisdiction.
- (4) 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.

160 Reviews of operation of emissions trading scheme

- (1) The Minister responsible for the administration of this Act must initiate a review of the operation and effectiveness of the emissions trading scheme established by this Act to be completed no later than 12 months before the end of—
 - (a) the first commitment period; or
 - (b) if the first commitment period has expired, the subsequent commitment period in which the review is initiated; or
 - (c) 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).
- (2) Without limiting the scope of the review, a review under subsection (1) must consider—
 - (a) whether an amendment to this Act in relation to the emissions trading scheme is necessary or desirable; and
 - (b) whether New Zealand has undertaken, or is expected to undertake, any international obligations with respect to its emissions and removals that are different from or additional to any international obligations that New Zealand had undertaken when this section came into force, or since the last review under this section; and
 - (c) the stringency of any of the international obligations specified in paragraph (b); and
 - (d) the contribution of the emissions trading scheme established under this Act to progress toward any targets that are in effect in accordance with section 224 at the time the review is initiated; and
 - (e) the types of Kyoto units and overseas units that may be surrendered for compliance with the emissions trading scheme established by this Act; and
 - (f) the operation of the commitment period reserve (if any); and
 - (g) potential for linkage of the emissions trading scheme established under this Act to other greenhouse gas emissions trading schemes; and
 - (h) the appropriateness of any methodologies that are prescribed for calculating emissions and removals; and
 - (i) whether it is necessary or desirable to—
 - (i) omit any of the activities from Schedule 3 or 4; and
 - (ii) add any additional removal activities to Part 2 of Schedule 4; and
 - (iii) amend the level of participant opt-in thresholds in Schedule 4; and
 - (j) what consequential changes to subpart 2 of this Part in respect of allocation plans are necessary or desirable having regard to—
 - (i) whether New Zealand has undertaken, or is expected to undertake, any international obligations with respect to its emissions and removals that are different from, or additional to, any international obligations that New Zealand had undertaken when this section came into force, or since the last review under this section; and
 - (ii) the stringency of any of the international obligations specified in subparagraph (i); and

- (iii) whether it is necessary or desirable to omit any activities from Schedules 3 and 4; and
 - (iv) the relative climate change obligations and emissions policies of New Zealand's trade competitors and trading partners; and
 - (v) any significant changes in emissions mitigation technology; and
 - (vi) the cost to the tax payer and the economy of providing free allocation under subpart 2 of this Part; and
 - (k) the appropriateness of the penalties in subpart 4 of this Part; and
 - (l) the implications (if any) of the following matters for the notification of intention under section 70:
 - (i) New Zealand's annual emissions for the 5 years before notification; and
 - (ii) the average price of units for the 2 years before notification; and
 - (m) the operation of the Innovation Fund established under section 74; and
 - (n) the impacts of the forestry sector elements of the emissions trading scheme established under this Act on biodiversity within New Zealand; and
 - (o) the costs and benefits of establishing an independent or quasi-independent government body to carry out the allocation process, or part of the allocation process, contained in subpart 2 of Part 4 of this Act; and
 - (p) social, economic, and environmental effects of the emissions trading scheme established by this Act (other than those considered under paragraphs (a) to (l)); and
 - (q) any other matter that the Minister responsible for the administration of this Act considers relevant.
- (3) The Minister responsible for the administration of the Act must appoint a panel to conduct any review under subsection (1) and report in accordance with terms of reference set by the Minister and the matters set out in this section.
- (4) Following the completion of each review under subsection (1), the Minister responsible for the administration of this Act must—
- (a) publish the report of the panel on the review; and
 - (b) present a copy of the report to the House of Representatives.
- (5) The Minister responsible for the administration of this Act may initiate reviews of the operation and effectiveness of the emissions trading scheme established by this Act at any time and may use any method of review (including, but not limited to, the method specified in this section).

161 Appointment and conduct of review panel

- (1) When appointing members to a review panel under section 160, the Minister responsible for the administration of the Act must—

- (a) ensure there are a minimum of 3 and maximum of 7 members; and
 - (b) ensure the majority of members are not employees of a Department as defined in the State Sector Act 1998; and
 - (c) consider whether the members have, in the Minister's opinion, the appropriate knowledge, skill, and experience, including with respect to—
 - (i) this Act; and
 - (ii) New Zealand's international obligations under the Protocol and the Convention 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 responsible for the administration of the Act at least 1 month prior to completion of the final report.
- (4) In conducting a review, the 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) may call for submissions.

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)—
 - (a) takes effect for the removal activity or activities concerned on and from—
 - (i) 1 January of the next year, if made on or before 30 June in any year; or
 - (ii) 1 July of the next year, if made on or after 1 July in any year; and
 - (b) expires,—
 - (i) if made on or before 30 June in any year, on the close of 31 December of that year, except so far as it is expressly confirmed by Act of Parliament passed during that year; or
 - (ii) if made on or after 1 July in any year, on the close of 30 June in the following year, except so far as it is expressly confirmed by Act of Parliament passed before the latter date.

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
 - (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 chief executive under section 92; and
 - (d) authorising the chief executive to issue guidelines or standards by notice in the *Gazette* in relation to the data or information prescribed under paragraph (a), and providing that compliance with the guidelines or standards is to be treated as compliance with the relevant requirements in the regulations; 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 chief executive; and
 - (vi) the procedure for, and circumstances in which, recognition may be suspended or revoked; and
 - (vii) fees for recognition of 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 department of the chief executive; and
 - (c) 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 regulations for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989.

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 chief executive 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

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—

- (a) prescribing criteria for other forest land that may be used to offset pre-1990 forest land:
- (b) prescribing an application process for applications for offsetting under section 182, which may include (but is not limited to) a requirement that applications include or be accompanied by information about the age

and species of the forest species on the pre-1990 forest land and the emissions that will result from the deforestation of the pre-1990 forest land:

- (c) prescribing conditions and effects of offsetting pre-1990 forest land with offsetting forest land, which may include (but are not limited to)—
 - (i) the offsetting forest land being treated as pre-1990 forest land for the purposes of the Act;
 - (ii) liability for deforestation of any offsetting forest land to be calculated by reference to the age and species of the trees deforested from the pre-1990 forest land that was offset;
 - (iii) the application of any specified provision of this Act, with any necessary modifications, to and in respect of—
 - (A) the offsetting forest land; or
 - (B) any applicant for approval to offset forest land; or
 - (C) any other specified class or classes of person.

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 165, 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 165.

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 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 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 chief executive in—
- (a) 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;
 - (b) administering the operation of this Part and Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4;
 - (c) enforcing and monitoring compliance with this Part or Part 5 in relation to an activity listed in Part 1 or 2 of Schedule 4;
 - (d) 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.
- (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, or other processes in connection with the administration of this Part or Part 5 in relation to an activity listed in Parts 1 and 2 of Schedule 4;
 - (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
 - (c) prescribe the matters for which direct and indirect costs may be recovered; 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.

- (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) prescribing the manner in which 25 or more owners of land may be described in the register of participants under section 56 or 57, for the purposes of section 157(2)(c); and
 - (d) prescribing forest species that are tree weeds for the purposes of section 184; and
 - (e) prescribing criteria for carbon accounting areas; and
 - (f) requiring notification by the chief executive 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) prescribing a threshold or amount in respect of the number of animals, the level of emissions, or the volume of synthetic fertiliser for the activities listed in Part 5 of Schedule 4; and
 - (i) requiring information to be provided, and prescribing the information that must be provided, to a person who is a participant in respect of an activity listed in Part 5 of Schedule 3 by a person who is a participant in respect of an activity listed in Part 5 of Schedule 4 for the purposes of section 216(3); and
 - (j) prescribing a format or formats for the keeping of records under section 62(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, 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; 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 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
 - (o) providing for any other matters contemplated by this Part and Part 5 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

- (1) The following written material may be incorporated by reference in regulations made under section 163, 164, 165, 167, or 168:
- (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.

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 section 163, 164, 165, 167, or 168, as may be applicable, after the making of regulations A, state that the particular amendment or replacement has 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

- (1) This section applies to regulations made under section 163, 164, 165, 167, or 168 that—
 - (a) incorporate material by reference:
 - (b) state that an amendment to, or replacement 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 reasonable price; and
 - (c) give notice in the *Gazette* stating—
 - (i) that the proposed material is available for inspection during working 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 executive—

- (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 available for inspection during working hours, free of charge; and
 - (iii) the place where it can be inspected; and
 - (iv) that copies of the material can be purchased; and
 - (v) the place where the material can be purchased; and
 - (vi) 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;
 - (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 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in regulations or to an amendment to, or replacement of, that material.

176 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference

Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in regulations to be presented to the House of Representatives.

177 Application of Standards Act 1988 not affected

Sections 169 to 176 do not affect the application of sections 22 to 25 of the Standards Act 1988.

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 chief executive in any court of competent jurisdiction.
- (2) The chief executive may enter into any agreement or arrangement, on any terms that the chief executive thinks fit, with any person to collect, or assist in the collection of, any fees or charges that are payable.

Part 5

Sector specific provisions

Subpart 1—Forestry sector

General

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 land 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) naturally established a covering of at least 500 stems of forest species; or

- (b) 10 years after clearing, predominantly exotic forest species are growing, but that hectare does not have tree crown cover of at least 30% from trees that have reached 5 metres in height; or
 - (c) 20 years after clearing, predominantly indigenous forest species are growing, but that hectare does not have tree crown cover of at least 30% from trees that have reached 5 metres in height.
- (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 chief executive's ability to exercise powers under section 121 in respect of the deforestation of a hectare of forest land whenever the chief executive 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.

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 chief executive is satisfied that—
- (a) the right to decide to deforest the pre-1990 forest land was vested in a third party, whether before or after 1 January 2008; and
 - (b) the landowner had no control over the decision.
- (2) If the chief executive 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.

- (2) Subsection (3) applies to a landowner converting a hectare of pre-1990 forest land that was cleared but not deforested prior to—
 - (a) the forest land being transferred to the landowner; or
 - (b) control of the forest land reverting to that landowner following the expiry or termination of a forestry right, Crown forestry licence, lease, or other agreement that relates to the land.
- (3) 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.

182 Offsetting in relation to pre-1990 forest land

- (1) A landowner of pre-1990 forest land (or, in the circumstances specified in section 180, a third party) who intends to carry out the activity in Part 1 of Schedule 3 may apply to the EPA to offset the pre-1990 forest land proposed to be deforested with other forest land.
- (2) The EPA—
 - (a) must approve the offsetting of the pre-1990 forest land by other forest land (the **offsetting forest land**) if satisfied that—
 - (i) the area of proposed offsetting forest land meets the prescribed criteria; and
 - (ii) any other conditions in regulations under section 165 are met; and
 - (b) may impose any prescribed conditions on the approval.
- (3) Despite anything in this Act,—
 - (a) if the EPA approves the offsetting of pre-1990 forest land, subject to complying with any conditions of the approval,—
 - (i) the pre-1990 forest land ceases to be pre-1990 forest land; and
 - (ii) the applicant does not become a participant in respect of the deforestation of the pre-1990 forest land; and
 - (b) no person is liable to comply with section 62, submit an emissions return, or surrender units in relation to the deforestation of the pre-1990 forest land unless—
 - (i) regulations made under this Act require any of these acts by a person upon deforestation of the offsetting forest land; or

- (ii) any other conditions of offsetting imposed by regulations are not met; and
- (c) a person may not register as a participant in respect of an activity listed in Part 1 of Schedule 4 in respect of post-1989 forest land that is offsetting forest land unless, in accordance with a process prescribed in regulations, units have been surrendered in respect of the deforestation of the pre-1990 forest land that was offset, or surrendered in respect of the offsetting forest land, as the case may be.

183 Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land

- (1) This section applies to a person who—
 - (a) is a landowner of an area of pre-1990 forest land at the date of issue of the allocation plan referred to in section 71; 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 71 at the date of the land's conversion.
- (2) A person to whom this section applies may apply to the chief executive 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 71.
- (3) An application under subsection (1) must—
 - (a) be submitted to the chief executive before 30 June 2009; 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 from each person who owned the land on 1 September 2007 (other than a joint tenant who is a professional trustee) that the person, together with any associated persons of that person, owned on 1 September 2007 in total less than 50 hectares of pre-1990 forest land; and
 - (f) be signed by the applicant; and

- (g) be accompanied by any other prescribed information.
- (4) If the chief executive 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 chief executive 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 chief executive may, at his or her discretion, accept applications after the date specified in that subsection.
- (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 chief executive 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.
- (7) For the purposes of this section,—
own, in relation to pre-1990 forest land, means to be a landowner of the land
professional trustee means a trustee whose profession, employment, or business is or includes acting as a trustee or investing money on behalf of others.

184 Exemptions for deforestation of land with tree weeds

- (1) The chief executive 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 is a specified type of tree weed; and
 - (b) no allocation of units to a landowner has been made in respect of the land under an allocation plan under section 71.
- (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 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 chief executive.
- (3) If a notice has been given under subsection (1), the landowner of pre-1990 forest land on which there is a specified type of tree weed or, in the circumstances referred to in section 180, a third party may apply to the chief executive for the land to be declared exempt land.
- (4) An application for an exemption under subsection (3) must—
 - (a) be submitted to the chief executive before the date notified under subsection (2)(c); and
 - (b) be in the prescribed form and accompanied by the prescribed fee (if any); and
 - (c) 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 is a specified type of tree weed; and
 - (e) be signed by the applicant; and
 - (f) be accompanied by any other prescribed information.
- (5) The chief executive must consider every application received under subsection (4) against the priorities in the relevant notice given under subsection (1) 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 chief executive declares the land to be exempt land, notify the applicant accordingly.
- (6) The clearing of a tree weed on exempt land must be—
 - (a) commenced within 12 months of the date of notification of the exemption; and
 - (b) completed within 24 months of that date.
- (7) 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.
- (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 chief executive 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) For the purposes of this section, **tree weed** means a tree that—
- (a) is defined or designated as—
 - (i) a pest in a pest management strategy under the Biosecurity Act 1993; or
 - (ii) a tree weed in regulations made under this Act; and
 - (b) has naturally regenerated.

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.

186 Methodology for pre-1990 forest land

- (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) 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; 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.

*Post-1989 forest land***187 Conditions on registration as participant in respect of certain activities relating to 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 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 unless the person—
- (a) has submitted an emissions return to the chief executive 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), the number of units listed in the assessment under paragraph (a)(ii); and
 - (c) complies with subsection (1), if applicable.
- (3) To avoid doubt, and subject to sections 191 and 193, 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.

188 Registration as participant in respect of post-1989 forest land

- (1) An application under section 57 to be registered as a participant in respect of an activity listed in Part 1 of Schedule 4—
- (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 any action taken by the applicant after 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 prior to planting of the forest species on the land) complied with the provisions of the Resource Management Act 1991, including any plan under that Act, and the Forests Act 1949, as in force at the time that the action was taken; and
 - (d) must be accompanied by any information prescribed by regulations made under this Act.
- (2) The chief executive must, in respect of every person who is a participant in respect of an activity listed in Part 1 of Schedule 4, keep a record of the carbon accounting area or areas in respect of which the person is a participant.
- (3) A person who is a participant in respect of an activity listed in Part 1 of Schedule 4—
- (a) may apply to the chief executive to—
 - (i) add or remove any carbon accounting area 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 a carbon accounting area in respect of which the person is recorded as a participant; and
 - (b) must notify the chief executive if 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.
- (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 chief executive 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 chief executive—
- (a) registers a person as a participant under section 57 in relation to an activity listed in Part 1 of Schedule 4, the chief executive 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 chief executive 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 forestry 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 notify the participant accordingly.
- (7) If the chief executive 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 chief executive 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 chief executive 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 the changes made to the participant's carbon accounting areas and notify the participant accordingly.
- (8) A change made to the participant's record under subsection (6)(b)(ii) or (7)(b)(ii) has effect on and from the date of the relevant notice given under subsection (6)(b)(ii) or (7)(b)(ii), as the case may be.
- (9) Despite section 57(8), a person who has terminated a forest sink covenant registered under section 67ZD of the Forests Act 1949 and then registers as a participant in respect of that land is to be treated as being a participant in respect of the post-1989 forest land from the date the covenant was registered on the land under section 67ZD of the Forests Act 1949.

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.
- (3) A person to whom this section applies may, before 31 March 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
 - (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.
- (4) A person to whom this section applies must, if registered as a participant on the last day of any mandatory emissions return period, within 3 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; and
 - (ii) ending on the last day of the mandatory emissions return period that has just ended.
- (5) An emissions return submitted under subsection (3) or (4)—
- (a) must, in respect of each carbon accounting area covered by the return,—
 - (i) contain the information specified in section 65(2)(a) to (d); and
 - (ii) assess liability to surrender units, taking into account section 190; and
 - (iii) contain any information required by subsection (6); 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 as referred to in subsection (8); and
 - (c) must comply with section 65(2)(e) and (f); and
 - (d) must be submitted in accordance with section 65(3).
- (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 net 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).
- (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 chief executive 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).
- (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
- (d) 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 chief executive, 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.
- (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).

190 Special rules regarding surrender of units in relation to post-1989 forest land

- (1) Despite anything in this Act, a person who is or was a participant in respect of an activity listed in Part 1 of Schedule 4 is not liable to surrender more units in relation to any area of post-1989 forest land than the number of units transferred for removals from that land, less units previously surrendered for emissions from the land, calculated in accordance with subsection (2).
- (2) To determine the maximum number of units required to be surrendered in respect of a carbon accounting area in respect of any emissions return (or, where relevant, in respect of an emissions return under section 191 or 193, in respect of part of a carbon accounting area), a person must—
 - (a) determine the net number of New Zealand units transferred for removals from the carbon accounting area in respect of any emissions returns submitted since a participant was recorded as carrying out an activity listed in Part 1 of Schedule 4 in respect of the land (that is, the number of units transferred for removals less any units repaid under section 123(6) or 189(8)); and
 - (b) determine the net number of units surrendered in respect of emissions from the carbon accounting area in respect of any emissions returns submitted since a participant was recorded as carrying out an activity listed in Part 1 of Schedule 4 in respect of the land (that is, the number of units surrendered, less any units reimbursed under section 124 or 189(7)); and
 - (c) if the area is—
 - (i) a whole carbon accounting area, subtract the number of units referred to in paragraph (b) from the number of units referred to in paragraph (a); or

- (ii) part of a carbon accounting area,—
 - (A) take the number of units determined by subtracting the number of units referred to in paragraph (b) from the number of units referred to in paragraph (a); and
 - (B) divide that number by the number of hectares in the carbon accounting area; and
 - (C) multiply that number by the number of hectares in the part of the carbon accounting area in respect of which the return is submitted.
- (3) For the purposes of this section,—
 - (a) any units issued in respect of the post-1989 forest land while it was the subject of a forest sink covenant under the Forests Act 1949 must be treated as New Zealand units transferred under this Act in respect of removals from the post-1989 forest land; and
 - (b) 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).

191 Ceasing to be registered as participant in respect of post-1989 forest land

- (1) Subject to section 192, a person who is or was a participant in respect of an activity listed in Part 1 of Schedule 4 must submit an emissions return to the chief executive within 20 working days of—
 - (a) being removed from the register in respect of that activity; or
 - (b) ceasing to be a participant in respect of all or part of any carbon accounting area in respect of which the person is recorded as carrying out the activity under section 188; or
 - (c) removing land from a carbon accounting area or removing a carbon accounting area from the land in respect of which the person is recorded as a participant under section 188.
- (2) The emissions return must—
 - (a) set out the carbon accounting area or areas to which the emissions return relates (that, if the person has been removed from the register in respect of an activity listed in Part 1 of Schedule 4, must include all carbon accounting areas in respect of which the person was, immediately prior to being removed from the register, recorded as a participant); and
 - (b) if the return is submitted because the person is ceasing to carry out the activity in respect of part of a carbon accounting area or is removing land from a carbon accounting area under section 188, identify the part

- of the carbon accounting area in respect of which the person is ceasing to carry out the activity or which the person is removing from the carbon accounting area; and
- (c) state the maximum number of units that could be required to be surrendered in respect of each carbon accounting area, or part of a carbon accounting area, covered by the return calculated in accordance with section 190(2); and
 - (d) be accompanied by any prescribed fee and other prescribed information; and
 - (e) be signed by the participant or former participant.
- (3) A person required to submit an emissions return in accordance with this section must, by the same date by which a return is required to be submitted under subsection (1), surrender the total number of units that could be required to be surrendered for the post-1989 forest land covered by the return (calculated by adding together the figures for each carbon accounting area referred to in subsection (2)(c) together).
- (4) An emissions return under this section must be submitted in the prescribed manner and format.

192 Transfer of registration as participant in respect of post-1989 forest land

- (1) Despite anything in this Act,—
- (a) if any post-1989 forest land, registered forestry right, registered lease, or Crown conservation contract in respect of which a person is a participant in respect of an activity listed in Part 1 of Schedule 4 is transferred, including by way of sale, assignment, or transmission,—
 - (i) the person from whom it is transferred (the **transferor**) ceases, from the date of transfer, to be the participant under this Act; and
 - (ii) the person to whom the forest land, registered forestry right, registered lease, or Crown conservation contract is transferred (the **transferee**) is, from the date of transfer, the participant in respect of the activity relating to that post-1989 forest land; or
 - (b) if a forestry right or lease is registered, or a Crown conservation contract is entered into, in respect of post-1989 forest land in respect of which the landowner is registered as a participant in respect of owning that land,—
 - (i) the landowner ceases, from the date of registration of the forestry right or lease, or the date of entry into the Crown conservation contract, as applicable, to be the participant under this Act; and
 - (ii) the holder of the registered forestry right or registered lease, or the other party to the Crown conservation contract, as applicable (the **new participant**), is, from the date of registration of the forestry right or lease or the date of entry into the contract, the participant

- in respect of the relevant activity listed in Part 1 of Schedule 4 in respect of the post-1989 forest land.
- (2) If subsection (1)(a) or (b) applies,—
- (a) in the case of a transferor and transferee, the transferor and transferee must, within 10 working days of the date of transfer of the land, registered forestry right, or registered lease, or the Crown conservation contract (or, in the case of transmission, as soon as practicable), notify the chief executive of the transfer; and
 - (b) in the case of a landowner and a new participant, the landowner and new participant must, within 10 working days of the date of registration of the forestry right or lease, or the date of entry into the Crown conservation contract, notify the chief executive of the registration of the forestry right or lease, or the entry into the contract; and
 - (c) the transferor or landowner (as the case may be) is not required to comply with section 191.
- (3) A notice under subsection (2) must be—
- (a) in the prescribed form; and
 - (b) accompanied by any prescribed fee and any prescribed information; and
 - (c) signed by both the transferor and the transferee, or the landowner and the new participant (as the case may require).
- (4) Following receipt of a notice complying with subsection (3), the chief executive must,—
- (a) if the transferee or new participant is—
 - (i) not already registered under section 57, enter the transferee's or new participant's name on the register kept under section 57 as a participant in respect of the relevant activity listed in Part 1 of Schedule 4; or
 - (ii) already registered under section 57, amend that registration, if necessary, to show that the transferee or new participant is now a participant in respect of the relevant activity listed in Part 1 of Schedule 4; or
 - (b) if the transferor or landowner is registered under section 57 only in respect of carrying out the activity in respect of the post-1989 forest land, registered forestry right or registered lease, or Crown conservation contract that has been transferred or in respect of which a forestry right or lease has been registered, or a Crown conservation contract has been entered into, remove the transferor's or landowner's name from the register in respect of the relevant activity listed in Part 1 of Schedule 4; or

- (c) if the transferor, landowner, transferee, or new participant is registered under section 57 as a participant other than in respect of the post-1989 forest land, registered forestry right or registered lease, or Crown conservation contract that has been transferred or in respect of which a forestry right or lease has been registered, or a Crown conservation contract has been entered into, update the chief executive's records to reflect the changes to the post-1989 forest land in respect of which the person is recorded as a participant; or
 - (d) as applicable, give notice to the transferor and transferee, or landowner and new participant, that the chief executive has taken the action in paragraph (a), (b), or (c).
- (5) To avoid doubt, for the purposes of section 54(4), a transferor or landowner—
- (a) continues to be liable in respect of any obligations that arose while the transferor or landowner was a participant (for example, in respect of the filing of returns and surrendering of units required under section 189); and
 - (b) is entitled to be transferred New Zealand units in respect of removals covered by any emissions return submitted prior to the relevant transfer or registration of a forestry right or lease, or entry into of a Crown conservation contract; and
 - (c) is not required to notify the chief executive separately under section 59 if the result of the transfer is that the transferor is ceasing to carry out the activity.

193 Transfer of registration on expiry or termination of registered forestry right, registered lease, or Crown conservation contract in relation to post-1989 forest land

- (1) Despite anything in this Act, if a registered forestry right, registered lease, or Crown conservation contract in respect of which a person is a participant in respect of an activity listed in Part 1 of Schedule 4 expires or is terminated,—
- (a) the person (the **former participant**) ceases, from the date of expiry or termination, to be the participant; and
 - (b) the landowner of the post-1989 forest land covered by the registered forestry right, registered lease, or Crown conservation contract is, from the date of expiry or termination, the participant in respect of that post-1989 forest land; and
 - (c) the former participant and landowner must jointly notify the chief executive within 10 working days of the transfer or expiry or termination; and
 - (d) the former participant is not required to comply with section 191, but must instead, within 20 working days, submit an emissions return that complies with subsection (4).
- (2) A notice under subsection (1) must be—

- (a) in the prescribed form; and
 - (b) accompanied by any prescribed fee and any prescribed information; and
 - (c) signed by both the former participant and the landowner.
- (3) Following receipt of a notice complying with subsection (2), the chief executive must,—
- (a) if the landowner is—
 - (i) not already registered under section 57, enter the landowner's name on the register kept under section 57 as a participant in respect of the relevant activity listed in Part 1 of Schedule 4; or
 - (ii) already registered under section 57, amend that registration, if necessary, to show that the landowner is now a participant in respect of the relevant activity listed in Part 1 of Schedule 4:
 - (b) if the former participant is registered under section 57 only in respect of carrying out the activity in respect of the forestry right or lease, or a Crown conservation contract that has expired or has been terminated, remove the former participant's name from the register in respect of the relevant activity listed in Part 1 of Schedule 4:
 - (c) if the former participant or landowner is registered under section 57 in respect of carrying out the activity other than in respect of the registered forestry right or registered lease, or a Crown conservation contract that has expired or has been terminated, update the chief executive's records to reflect the changes to the post-1989 forest land in respect of which the person is recorded as a participant:
 - (d) give notice to the former participant and landowner of the matters specified in paragraphs (a) to (c) (if applicable).
- (4) An emissions return under this subsection must—
- (a) set out the carbon accounting area or areas to which the emissions return relates; and
 - (b) if the return is submitted because a registered forestry right, registered lease, or a Crown conservation contract that covers part only of a carbon accounting area has expired or been terminated, identify the part of the carbon accounting area in respect of which the registered forestry right, registered lease, or Crown conservation contract has expired or been terminated; and
 - (c) record the emissions and removals from each of the carbon accounting areas, or part of a carbon accounting area, covered by the expired or terminated registered forestry right, registered lease, or Crown conservation contract, calculated in accordance with regulations made under this Act; and

- (d) in respect of each carbon accounting area or part of a carbon accounting area covered by the return be for the period—
 - (i) commencing on the later of—
 - (A) the first day of the mandatory emissions return period (as defined in section 189(9)) in which the registered forestry right, registered lease, or Crown conservation contract expired or was terminated; or
 - (B) the date on which the land in the carbon accounting area, or part of a carbon accounting area became post-1989 forest land; and
 - (ii) ending on the date of expiry or termination of the registered forestry right, registered lease over the land, or Crown conservation contract; and
- (e) comply with section 189(5) and (6), as if the references in those provisions to subsection (4) were references to this section.
- (5) Section 189(7) applies to a former participant who submits a return under this section as if the references in that provision to subsection (4) were references to this section.
- (6) Section 189(8) applies to a former participant who submits a return under this section as if the references in that provision to “this section” were references to this section.

194 Information about status of forest land

- (1) Despite anything in this Act, the chief executive 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, and the period covered by those returns; and
 - (b) the net number of New Zealand units (if any) that have been transferred for removals in respect of each carbon accounting area covered by the information request (determined by subtracting the number of units repaid under section 123(6) or 189(7), if any, from the number of units transferred for removals); and

- (c) the net number of units (if any) that have been surrendered in respect of each carbon accounting area covered by the information request (determined by subtracting the number of units reimbursed under section 124 or 189(7), if any, from the number of units surrendered).
- (3) In this section, units transferred for removals, surrendered, repaid, or reimbursed in relation to a carbon accounting area include units that a person would have been entitled to receive or been required to surrender or repay in respect of the carbon accounting area, but that were not actually transferred, surrendered, repaid, or reimbursed because of an election under section 189(8).

Post-1989 forest land and pre-1990 forest land

195 Notification of status of forest land

- (1) The chief executive must, if required by regulations made under section 168, notify the following persons of the details of the land that the chief executive is satisfied is pre-1990 forest land, post-1989 forest land in respect of which a person has registered as a participant under section 57, or that the chief executive has declared to be exempt land:
 - (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 or provisionally registered under the Land Transfer Act 1952; and
 - (c) the Registrar of Deeds in relation to land that is registered under the Deeds Registration Act 1908.
- (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 1952, 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

196 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—
 - (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 applies 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.
- (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.
- (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, the person who carried out the activity has until 31 January 2009 to give notice to the chief executive 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).

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.

Subpart 2—Liquid fossil fuels sector

198 Registration as participant by purchasers of jet 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 chief executive at any time.
- (2) If the chief executive registers a person as a participant under section 57 in respect of an activity listed in Part 3 of Schedule 4,—
 - (a) the chief executive 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 chief executive 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 chief executive 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).

199 Historical information sufficient to satisfy chief executive

- (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 jet 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 chief executive receives an application under section 57 that includes the information specified in subsection (1), the chief executive may, for the purposes of section 57(4), satisfy him or herself 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 chief executive from requiring a person specified in subsection (1) to provide any further information that the chief executive 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 the threshold level of obligation jet 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 jet 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 chief executive under section 59(1) that the person has ceased, or will cease, to carry out the activity; and
- (b) the chief executive 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 jet fuel

A participant in respect of an activity listed in Part 2 of Schedule 3 is not required to comply with section 62, report in an emissions return, or surrender units, in respect of obligation jet 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)—
- (a) takes effect on and from—
 - (i) 1 January of the next year, if made on or before 30 June in any year; or
 - (ii) 1 July the next year, if made on or after 1 July in any year; and
 - (b) expires,—
 - (i) if made on or before 30 June in any year, on the close of 31 December of that year, except so far as it is expressly confirmed by Act of Parliament passed during that year; or

- (ii) if made on or after 1 July in any year, on the close of 30 June in the following year, except so far as it is expressly confirmed by Act of Parliament passed before the latter date.

203 Treatment of obligation fuels

- (1) This section applies if, in breach of the Customs and Excise Act 1996, 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 1996.

Subpart 3—Stationary energy sector

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 any Act 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.

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.
- (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 Territorial 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 emissions 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 wholly owned subsidiary 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 a wholly owned subsidiary of a participant who mines coal or natural gas.
- (2) In subsection (1), **subsidiary** has 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 chief executive at any time.
- (2) If the chief executive registers a person as a participant under section 57 in respect of an activity listed in Part 4 of Schedule 4,—
 - (a) the chief executive 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 chief executive 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 chief executive 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 chief executive 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 chief executive 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).

210 Historical information sufficient to satisfy chief executive

- (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 chief executive receives an application under section 57 that includes the information specified in subsection (1), the chief executive may, for the purposes of section 57(4), satisfy himself or herself 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 chief executive from requiring a person specified in subsection (1) to provide any further information that the chief executive requires to satisfy him or herself 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 chief executive under section 59(1) that the person has ceased, or will cease, to carry out the activity; and
- (b) the chief executive 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.

212 Effect of registration by purchasers of coal or natural gas

A participant who mines coal or mines natural gas is not required to comply with section 62, report in an emissions return, or 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

213 Registration as participants by persons carrying out activities listed in Part 5 of Schedule 4

- (1) An application under section 57 to be registered as a participant in respect of an activity listed in Part 5 of Schedule 4 may be submitted to the chief executive at any time.
- (2) If the chief executive registers a person as a participant under section 57 in respect of an activity listed in Part 5 of Schedule 4,—
 - (a) the chief executive must notify, under section 57(6)(b),—
 - (i) if the activity is listed in subpart 1 of Part 5 of Schedule 4, every person who is registered under section 56 in respect of an activity in subpart 1 of Part 5 of Schedule 3; or
 - (ii) if the activity is listed in subpart 2 of Part 5 of Schedule 4, every person who is registered under section 56 in respect of an activity in subpart 3 of Part 5 of Schedule 3; and
 - (b) the registration takes effect 12 months from the date of the notice to the applicant for registration issued under section 57(6).
- (3) If the chief executive 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 5 of Schedule 4, the chief executive must—
 - (a) notify, under section 58(3)(c),—
 - (i) if the activity is listed in subpart 1 of Part 5 of Schedule 4, every person who is registered under section 56 in respect of an activity in subpart 1 of Part 5 of Schedule 3; or

- (ii) if the activity is listed in subpart 2 of Part 5 of Schedule 4, every person who is registered under section 56 in respect of an activity in subpart 3 of Part 5 of Schedule 3; and
- (b) remove, under section 58(4), the applicant's name from the register on the date that is 12 months after the date of the notice issued under section 58(3)(b) and (c).

214 Historical information sufficient to satisfy chief executive

- (1) A person who carries out an activity listed in Part 5 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 fertiliser purchased or number of animals farmed, as the case may require, 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 chief executive receives an application under section 57 that includes the information specified in subsection (1), the chief executive may, for the purposes of section 57(4), 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 5 of Schedule 4 that is specified in the application on the basis of that information.
- (3) Nothing in this section prevents the chief executive from requiring a person specified in subsection (1) to provide any further information that the chief executive requires to satisfy him or herself that the person is, or will be when the person's registration takes effect, carrying out the activity listed in Part 5 of Schedule 4 that is specified in the application.

215 Effect of purchasing or farming less than threshold level

If a person is a participant in respect of an activity listed in Part 5 of Schedule 4, and in any year the volume of fertiliser that the person purchases, or the number of animals the person farms, is less than, or the person knows that the volume purchased or number farmed will be less than, the prescribed thresholds—

- (a) the person is not required to notify the chief executive under section 59(1) that the person has ceased, or will cease, to carry out the activity; and
- (b) the chief executive 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.

216 Effect of registration by farmers

- (1) A participant in respect of an activity listed in subpart 1 of Part 5 of Schedule 3 is not required to comply with section 62, report in an emissions return, or surrender units, in respect of synthetic fertiliser containing nitrogen purchased other than for on-selling, by a person who is a participant in respect of an activity listed in subpart 1 of Part 5 of Schedule 4.
- (2) A participant in respect of an activity listed in subpart 3 of Part 5 of Schedule 3 is not required to comply with section 62, report in an emissions return, or surrender units, in respect of ruminant animals, pigs, horses or poultry that are farmed, raised, grown or kept by a person who is a participant in respect of an activity listed in subpart 2 of Part 5 of Schedule 4.
- (3) A participant in respect of an activity listed in Part 5 of Schedule 4 must, if required by regulations made under section 168, provide to participants in respect of activities listed in Part 5 of Schedule 3, the prescribed information that indicates whether the emissions from the activity carried out by the participant have been accounted for by that participant.

Subpart 5—Transitional provisions

217 Transitional provision for penalties

- (1) This section applies to a participant who submits an annual emissions return in respect of the activity in—
 - (a) Part 1 of Schedule 3 that relates to the period from 1 January 2008 to 31 December 2009; or
 - (b) Part 2 of Schedule 3 or Part 3 of Schedule 4 that relates to the year from 1 January 2011 to 31 December 2011; or
 - (c) Part 3 of Schedule 3, subpart 1 of Part 4 of Schedule 3, and Part 4 of Schedule 4 that relates to the year from 1 January 2010 to 31 December 2010; or
 - (d) subpart 2 of Part 4 of Schedule 3, Part 5 or 6 of Schedule 3, or Part 5 of Schedule 4 that relates to the year from 1 January 2013 to 31 December 2013.
- (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 chief executive 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) 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 or 136.

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) 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; 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) subpart 1 or 2 of Part 5 of Schedule 4, if an Order in Council is made under section 2A(15) or (16), in the period 1 January 2011 to 31 December 2011.
- (2) Despite anything in this Act, a person to whom this section applies—
 - (a) may (but is not required to), if the person carries out an activity in subsection (1)(a) during the relevant period, notify the chief executive 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 chief executive 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 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 chief executive 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 of Schedule 3 in the period 1 January 2010 to 31 December 2010;
 - (ii) Part 5 of Schedule 3 in the period 1 January 2012 to 31 December 2012;
 - (iii) subpart 2 of Part 4 of Schedule 3 and Part 6 of Schedule 3 in the period 1 January 2012 to 31 December 2012; 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 2010 to 31 December 2010;
 - (ii) subpart 1 or 2 of Part 5 of Schedule 4, if an Order in Council is made under section 2A(15) or (16), in the period 1 January 2012 to 31 December 2012.
- (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).

220 Additional transitional provision for mandatory reporting for subpart 3 of Part 2 of Schedule 4 participants

Despite anything in this Act, 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 reported in that return.

221 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 the activity in Part 3 of Schedule 4 during the period from the date of commencement of this section until 31 December 2008 takes effect from the date of entry of the person's name as a participant in the register under section 57.
- (3) 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.
- (4) 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.

Part 6 Other matters

223 Establishment of Household Fund

- (1) This section establishes a fund for the purpose of reducing non-transport household greenhouse gas emissions through the promotion of household energy efficiency and conservation and household renewable energy technologies (the **Household Fund**).
- (2) A total of 1,000,000,000 New Zealand dollars must be paid to the Household Fund, from money appropriated by Parliament for the purpose, during the

- period beginning on the date of commencement of this section and ending on 1 July 2024.
- (3) Without limiting subsection (1), the Household Fund may be used for purposes that include (but are not limited to) the delivery, marketing and promotion of, and provision of grants relating to—
 - (a) household insulation and clean heat retrofits:
 - (b) energy efficient appliances and lighting:
 - (c) space and water heating efficiency improvements.
 - (4) The Minister—
 - (a) must, as soon as practicable after this section comes into force, determine the criteria for the use of the Household Fund; and
 - (b) may re-determine the criteria at any time.
 - (5) Before determining or re-determining the criteria for the use of the Household Fund, the Minister must seek and consider the advice of the Energy Efficiency and Conservation Authority.
 - (6) When advising the Minister on the criteria for the use of the Household Fund, the Energy Efficiency and Conservation Authority must have regard to—
 - (a) the income and energy needs of households, including whether the householders have SuperGold cards; and
 - (b) the cost-effectiveness of expenditure from the Household Fund in relation to the purpose of the Household Fund; and
 - (c) any other matters that the Authority considers relevant.
 - (7) The Energy Efficiency and Conservation Authority must manage and administer the Household Fund in accordance with the criteria determined by the Minister.

224 Gazetting of targets

- (1) The Minister responsible for the administration of this Act must set a target.
- (2) The Minister responsible for the administration of the Act may set a target, or amend or revoke an existing target, at any time.
- (3) As soon as practicable after setting, amending, or revoking a target under this section, the Minister must—
 - (a) publicly notify the target or revocation of the target in the *Gazette*; and
 - (b) make the target or revocation of the target publicly accessible via the Internet site of the department of the chief executive responsible for the administration of this Act.
- (4) To avoid doubt, the *Gazette* notice in subsection (1) may not be treated as a regulation for the purposes of the Regulations (Disallowance) Act 1989 or the Acts and Regulations Publications Act 1989.

- (5) To avoid doubt, any number of targets may be set using the process under this section.

Section 50: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

51 Regulations upon which consultation has been undertaken before commencement of this section

[Repealed]

Section 51: repealed, on 23 June 2020, by section 279 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

52 New Schedules 3 and 4 added

The Schedules 3 and 4 set out in the Schedule of this Act are added.

53 Process to apply before offsetting provisions may be commenced

[Repealed]

Section 53: repealed, on 1 January 2013, by section 103 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Consequential amendments

54 Amendments to Forests Act 1949

- (1) This section amends the Forests Act 1949.
- (2) Section 67Y(1) is amended by inserting the following paragraph after paragraph (j):
- (ja) prescribe the persons or organisations, or classes of persons or organisations, who have been recognised under section 92 of the Climate Change Response Act 2002 as being able to carry out verification functions under that Act, and who may carry out verification functions in relation to a forest sink or forest sink covenant:
- (3) Section 67Y is amended by inserting the following subsection after subsection (2):
- (2A) Regulations made under subsection (1)(b) may incorporate by reference any relevant—
- (a) methodologies prescribed in regulations made under section 163(1)(b) of the Climate Change Response Act 2002; or
- (b) guidelines or standards issued under regulations made under section 163(1)(d) of the Climate Change Response Act 2002.
- (4) Section 67Y is amended by inserting the following subsection after subsection (3):
- (3A) Regulations made under subsection (1)(k) may incorporate by reference any form or format for a record, return, or information prescribed under section 80, or in regulations made under section 168(1)(k) of the Climate Change

Response Act 2002 or in any guidelines or standards issued under regulations made under section 163(1)(d) of that Act.

55 Amendments to Forestry Rights Registration Act 1983

- (1) This section amends the Forestry Rights Registration Act 1983.
- (2) Section 2 is amended by repealing the definitions of **carbon sequestration**, **forest sink**, and **greenhouse gas**.
- (3) Section 2A(2)(b) is amended by omitting “units based on carbon sequestration that are received in accordance with a forest sink covenant” and substituting “the right to receive and the obligation to surrender units”.

56 Amendments to Summary Proceedings Act 1957

- (1) This section amends the Summary Proceedings Act 1957.
- (2) Part 2 of Schedule 1 is amended by inserting the following item in its appropriate alphabetical order:

Climate Change Response Act 2002	120	Evasion or similar offence
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57 Amendments to Income Tax Act 2004

Sections 58 to 66 amend the Income Tax Act 2004.

58 New heading and section CB 29 inserted

After section CB 28, the following is inserted:

Emissions trading scheme

CB 29 Disposal of ETS units

When this section applies

- (1) This section applies when a person disposes of an ETS unit.

Income

- (2) The amount that a person derives on disposal by the person of an ETS unit is income.

Surrender of unit: generally zero income

- (3) If the person disposes of the unit by surrender under the Climate Change Response Act 2002, the person is treated as deriving no income, unless subsection (4) applies.

Surrender of unit: pre-1990 forest land deforestation

- (4) Despite subsection (3), subsection (5) applies if—
 - (a) the person surrenders the ETS unit in relation to the deforestation of pre-1990 forest land; and

- (b) at the time of the surrender, the person would not derive income, other than exempt income or excluded income, from a disposal of the pre-1990 forest land without timber; and
- (c) the ETS unit is not a post-1989 forest land unit.

Surrendered unit treated as sold for cost

- (5) If subsection (4) applies, the surrendered unit is treated as having been sold by the person, at the time of its surrender, to an unrelated person for an amount equal to its cost.

Converted unit treated as sold

- (6) If a person converts a New Zealand unit into a Kyoto unit under the Climate Change Response Act 2002, the person is treated as having sold the converted unit for an amount equal to its cost, if any.

Exempt income: pre-1990 forest land unit

- (7) Section CW 3B (Pre-1990 forest land units: emissions trading scheme) applies to the disposal to another person of a pre-1990 forest land unit.

Disposal at below market value

- (8) Section GD 16 (Disposals of ETS units at below market value) may apply to treat a disposal (other than a surrender) as being for market value.

Defined in this Act: amount, convert, ETS unit, excluded income, exempt income, forest land unit, income, Kyoto unit, New Zealand unit, pre-1990 forest land unit, post-1989 forest land unit, pre-1990 forest land, surrender

59 New section CW 3B inserted

After section CW 3, the following is inserted:

CW 3B Pre-1990 forest land units: emissions trading scheme

When this section applies

- (1) This section applies when a person:
 - (a) is issued a pre-1990 forest land unit:
 - (b) disposes of a pre-1990 forest land unit other than by surrender under the Climate Change Response Act 2002.

Exempt income: issue

- (2) An amount of income derived by the person from the issue is exempt income, if the person is treated as deriving an amount of income from the issue.

Exempt income: disposal

- (3) An amount of income that the person derives from the disposal is exempt income if, at the time of the disposal, the person would not derive income,

other than exempt income or excluded income, from a disposal, without timber, of the pre-1990 forest land to which the ETS unit relates.

Defined in this Act: amount, ETS unit, excluded income, exempt income, income, pre-1990 forest land, pre-1990 forest land unit, surrender

60 New section CX 44F inserted

After section CX 44E, the following is inserted:

CX 44F Issue of post-1989 forest land units

When this section applies

- (1) This section applies when a person is issued a post-1989 forest land unit.

Excluded income

- (2) An amount of income derived by the person from the issue is excluded income, if the person is treated as deriving an amount of income from the issue.

Defined in this Act: amount, excluded income, income, post-1989 forest land unit

61 New heading and sections DB 46 and DB 47 inserted

After section DB 45, the following is added:

Emissions trading scheme

DB 46 Acquisition of ETS units

When this section applies

- (1) This section applies when a person acquires an ETS unit.

No expenditure or loss on issue of forest land units

- (2) The person is treated as incurring no expenditure or loss on the acquisition, if the acquisition is on issue of a forest land unit.

Deduction: acquisition from another person

- (3) The person is allowed a deduction for expenditure or loss incurred on acquiring the ETS unit from another person, if it is not the issue of a forest land unit.

Deduction: acquisition of Kyoto unit on conversion of New Zealand unit

- (4) Despite subsection (3), if a person converts a New Zealand unit to a Kyoto unit under the Climate Change Response Act 2002, the person is allowed a deduction for an amount of expenditure on the acquisition of the Kyoto unit that is—

- (a) not more than the cost, if any, to the person of the New Zealand unit; and
(b) not less than the cost, if any, to the person of the New Zealand unit.

Link with subpart DA

- (5) The link between this section and subpart DA (General rules) is as follows:

- (a) subsections (2) and (4)(a) override the general permission:

- (b) subsection (3) overrides the capital limitation. The other general limitations still apply:
- (c) subsection (4)(b) supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, convert, ETS unit, forest land unit, general limitation, general permission, Kyoto unit, loss, New Zealand unit

DB 47 Surrender of pre-1990 forest land units for post-1989 forest land deforestation

When this section applies

- (1) This section applies when a person surrenders a pre-1990 forest land unit under the Climate Change Response Act 2002 to meet a liability to surrender units in relation to post-1989 forest land.

Treated as disposal and reacquisition

- (2) The person is treated as having disposed of the pre-1990 forest land unit to an unrelated person and as having then reacquired it, in each case, immediately before the surrender and for an amount equal to the unit's market value at the time.

Defined in this Act: amount, post-1989 forest land, pre-1990 forest land unit, surrender

62 Meaning of trading stock

In section EB 2(3)(g), “exchange.” is replaced by “exchange:” and the following is added:

- (h) an ETS unit.

63 Valuation of excepted financial arrangements

- (1) After section ED 1(5), the following is inserted:

Closing value for replacement ETS unit

- (5B) A replacement ETS unit has a closing value of zero for each income year.
- (2) In section ED 1, in the list of defined terms, “replacement ETS unit” is inserted.

64 What is an excepted financial arrangement?

- (1) After section EW 5(3), the following is inserted:

Emissions unit

- (3B) An ETS unit is an excepted financial arrangement.
- (2) In section EW 5, in the list of defined terms, “ETS unit” is inserted.

65 New section GD 16 inserted

After section GD 15, the following is inserted:

GD 16 Disposals of ETS units at below market value

When this section applies

- (1) This section applies when—
 - (a) a person (the **transferor**) disposes of an ETS unit to another person (the **transferee**):
 - (b) the disposal is not a surrender or conversion under the Climate Change Response Act 2002:
 - (c) the disposal is for—
 - (i) no consideration; or
 - (ii) an amount of consideration that is less than the market value of the ETS unit at the time of disposal.

Disposal treated as being for market value

- (2) For the purposes of this Act, the consideration received by the transferor and provided by the transferee is treated as being equal to the market value at the time.

Defined in this Act: amount, convert, ETS unit, surrender

66 Definitions

- (1) This section amends section OB 1.
- (2) After the definition of **controlling shareholder**, the following is inserted:
convert, for a New Zealand unit, is defined in section 4(1) of the Climate Change Response Act 2002
- (3) After the definition of **estimated useful life**, the following is inserted:
ETS unit means:
 - (a) a New Zealand unit:
 - (b) an approved overseas unit, as defined in section 4(1) of the Climate Change Response Act 2002:
 - (c) a Kyoto unit
- (4) After the definition of **foreign withholding tax**, the following is inserted:
forest land unit means a pre-1990 forest land unit or a post-1989 forest land unit
- (5) After the definition of **KiwiSaver scheme**, the following is inserted:
Kyoto unit is defined in section 4(1) of the Climate Change Response Act 2002
- (6) After the definition of **New Zealand tax**, the following is inserted:
New Zealand unit is defined in section 4(1) of the Climate Change Response Act 2002
- (7) After the definition of **possession**, the following is inserted:

post-1989 forest land is defined in section 4(1) of the Climate Change Response Act 2002

post-1989 forest land unit, for a person, means a unit—

- (a) issued to the person under section 64 of the Climate Change Response Act 2002 for removals for post-1989 forest land; and
- (b) held continuously by the person since the issue

- (8) After the definition of **pre-1983 mortgage repayment insurance policy**, the following is inserted:

pre-1990 forest land is defined in section 4(1) of the Climate Change Response Act 2002

pre-1990 forest land unit, for a person, means a unit—

- (a) issued to the person under an allocation plan under section 73 of the Climate Change Response Act 2002; and
- (b) held continuously by the person since the issue

- (9) After the definition of **replaced area fraction**, the following is inserted:

replacement ETS unit means an ETS unit acquired by a person if—

- (a) the person has previously disposed of an ETS unit; and
- (b) the ETS unit disposed of was a post-1989 forest land unit; and
- (c) the person has not, since the disposal, acquired another ETS unit that replaces the unit disposed of; and
- (d) when paragraph (c) is applied, an acquisition following the disposal is treated as resulting in a replacement for the unit except to the extent treated as resulting in a replacement for another forest land ETS unit disposed of at the same time

- (10) In the definition of **revenue account property**, paragraph (b), “or event))” is replaced by “or event)); or”, and the following is added:

- (c) an ETS unit of the person

- (11) After the definition of **surplus refundable credits**, the following is inserted:

surrender, for an ETS unit, is defined in section 4(1) of the Climate Change Response Act 2002

67 Amendments to Income Tax Act 2007

Sections 68 to 76 amend the Income Tax Act 2007.

68 New heading and section CB 36 inserted

After section CB 35, the following is added:

Emissions trading scheme

CB 36 Disposal of ETS units

When this section applies

- (1) This section applies when a person disposes of an ETS unit.

Income

- (2) The amount that a person derives on disposal by the person of an ETS unit is income.

Surrender of unit: generally zero income

- (3) If the person disposes of the unit by surrender under the Climate Change Response Act 2002, the person is treated as deriving no income, unless subsection (4) applies.

Surrender of unit: pre-1990 forest land deforestation

- (4) Despite subsection (3), subsection (5) applies if—
- (a) the person surrenders the ETS unit in relation to the deforestation of pre-1990 forest land; and
 - (b) at the time of the surrender, the person would not derive income, other than exempt income or excluded income, from a disposal of the pre-1990 forest land without timber; and
 - (c) the ETS unit is not a post-1989 forest land unit.

Surrendered unit treated as sold for cost

- (5) If subsection (4) applies, the surrendered unit is treated as having been sold by the person, at the time of its surrender, to an unrelated person for an amount equal to its cost.

Converted unit treated as sold

- (6) If a person converts a New Zealand unit into a Kyoto unit under the Climate Change Response Act 2002, the person is treated as having sold the converted unit for an amount equal to its cost, if any.

Exempt income: pre-1990 forest land unit

- (7) Section CW 3B (Pre-1990 forest land units: emissions trading scheme) applies to the disposal to another person of a pre-1990 forest land unit.

Disposal at below market value

- (8) Section GC 4B (Disposals of ETS units at below market value) may apply to treat a disposal (other than a surrender) as being for market value.

Defined in this Act: amount, convert, ETS unit, excluded income, exempt income, forest land unit, income, Kyoto unit, New Zealand unit, pre-1990 forest land unit, post-1989 forest land unit, pre-1990 forest land, surrender

69 New section CW 3B inserted

After section CW 3, the following is inserted:

CW 3B Pre-1990 forest land units: emissions trading scheme*When this section applies*

- (1) This section applies when a person:
- (a) is issued a pre-1990 forest land unit:
 - (b) disposes of a pre-1990 forest land unit other than by surrender under the Climate Change Response Act 2002.

Exempt income: issue

- (2) An amount of income derived by the person from the issue is exempt income, if the person is treated as deriving an amount of income from the issue.

Exempt income: disposal

- (3) An amount of income that the person derives from the disposal is exempt income if, at the time of the disposal, the person would not derive income, other than exempt income or excluded income, from a disposal, without timber, of the pre-1990 forest land to which the ETS unit relates.

Defined in this Act: amount, ETS unit, exempt income, income, pre-1990 forest land, pre-1990 forest land unit, surrender

70 New section CX 48B inserted

After section CX 48, the following is inserted:

CX 48B Issue of post-1989 forest land units*When this section applies*

- (1) This section applies when a person is issued a post-1989 forest land unit.

Excluded income

- (2) An amount of income derived by the person from the issue is excluded income, if the person is treated as deriving an amount of income from the issue.

Defined in this Act: amount, excluded income, income, post-1989 forest land unit

71 New heading and sections DB 60 and DB 61 inserted

After section DB 59, the following is inserted:

Emissions trading scheme**DB 60 Acquisition of ETS units***When this section applies*

- (1) This section applies when a person acquires an ETS unit.

No expenditure or loss on issue of forest land units

- (2) The person is treated as incurring no expenditure or loss on the acquisition if the acquisition is on issue of a forest land unit.

Deduction: acquisition from another person

- (3) The person is allowed a deduction for expenditure or loss incurred on acquiring the ETS unit from another person if it is not the issue of a forest land unit.

Deduction: acquisition of Kyoto unit on conversion of New Zealand unit

- (4) Despite subsection (3), if a person converts a New Zealand unit to a Kyoto unit under the Climate Change Response Act 2002, the person is allowed a deduction for an amount of expenditure on the acquisition of the Kyoto unit that is—
- (a) not more than the cost, if any, to the person of the New Zealand unit; and
 - (b) not less than the cost, if any, to the person of the New Zealand unit.

Link with subpart DA

- (5) The link between this section and subpart DA (General rules) is as follows:
- (a) subsections (2) and (4)(a) override the general permission:
 - (b) subsection (3) overrides the capital limitation. The other general limitations still apply:
 - (c) subsection (4)(b) supplements the general permission and overrides the capital limitation. The other general limitations still apply.

Defined in this Act: capital limitation, convert, ETS unit, forest land unit, general limitation, general permission, Kyoto unit, loss, New Zealand unit

DB 61 Surrender of pre-1990 forest land units for post-1989 forest land emissions

When this section applies

- (1) This section applies when a person surrenders a pre-1990 forest land unit under the Climate Change Response Act 2002 to meet a liability to surrender units in relation to post-1989 forest land.

Treated as disposal and reacquisition

- (2) The person is treated as having disposed of the pre-1990 forest land unit to an unrelated person and as having then reacquired it, in each case, immediately before the surrender and for an amount equal to the unit's market value at the time.

Defined in this Act: amount, post-1989 forest land, pre-1990 forest land unit, surrender

72 Meaning of trading stock

- (1) In section EB 2(3)(h), “exchange.” is replaced by “exchange:” and the following is added:
- (i) an ETS unit.
- (2) In section EB 2, in the list of defined terms, “ETS unit” is inserted.

73 Valuation of excepted financial arrangements

- (1) After section ED 1(8), the following is inserted:

Closing value for replacement ETS unit

- (8B) A replacement ETS unit has a closing value of zero for each income year.
- (2) In section ED 1, in the list of defined terms, “replacement ETS unit” is inserted.

74 What is an excepted financial arrangement?

- (1) After section EW 5(3), the following is inserted:

Emissions unit

- (3B) An ETS unit is an excepted financial arrangement.
- (2) In section EW 5, in the list of defined terms, “ETS unit” is inserted.

75 New section GC 4B inserted

After section GC 4, the following is inserted:

GC 4B Disposals of ETS units at below market value*When this section applies*

- (1) This section applies when—
- (a) a person (the **transferor**) disposes of an ETS unit to another person (the **transferee**):
 - (b) the disposal is not a surrender or conversion under the Climate Change Response Act 2002:
 - (c) the disposal is for—
 - (i) no consideration; or
 - (ii) an amount of consideration that is less than the market value of the ETS unit at the time of disposal.

Disposal treated as being for market value

- (2) For the purposes of this Act, the consideration received by the transferor and provided by the transferee is treated as being equal to the market value at the time.

Defined in this Act: amount, convert, ETS unit, surrender

76 Definitions

- (1) This section amends section YA 1.
- (2) After the definition of **controlling shareholder**, the following is inserted:
convert, for a New Zealand unit, is defined in section 4(1) of the Climate Change Response Act 2002
- (3) After the definition of **estimated useful life**, the following is inserted:
ETS unit means:
(a) a New Zealand unit:

- (b) an approved overseas unit, as defined in section 4(1) of the Climate Change Response Act 2002;
 - (c) a Kyoto unit
- (4) After the definition of **foreign withholding tax**, the following is inserted:
forest land unit means a pre-1990 forest land unit or a post-1989 forest land unit
- (5) After the definition of **KiwiSaver scheme**, the following is inserted:
Kyoto unit is defined in section 4(1) of the Climate Change Response Act 2002
- (6) After the definition of **New Zealand tax**, the following is inserted:
New Zealand unit is defined in section 4(1) of the Climate Change Response Act 2002
- (7) After the definition of **possession**, the following is inserted:
post-1989 forest land is defined in section 4(1) of the Climate Change Response Act 2002
post-1989 forest land unit, for a person, means a unit—
- (a) issued to the person under section 64 of the Climate Change Response Act 2002 for removals for post-1989 forest land; and
 - (b) held continuously by the person since the issue
- (8) After the definition of **pre-1983 investments**, the following is inserted:
pre-1990 forest land is defined in section 4(1) of the Climate Change Response Act 2002
pre-1990 forest land unit, for a person, means a New Zealand unit—
- (a) issued to the person under an allocation plan under section 73 of the Climate Change Response Act 2002; and
 - (b) held continuously by the person since the issue
- (9) After the definition of **replaced area fraction**, the following is inserted:
replacement ETS unit means an ETS unit acquired by a person if—
- (a) the person has previously disposed of an ETS unit; and
 - (b) the ETS unit disposed of was a forest land unit other than a pre-1990 forest land unit; and
 - (c) the person has not since the disposal acquired another ETS unit that replaces the unit disposed of; and
 - (d) when paragraph (c) is applied, an acquisition following the disposal is treated as resulting in a replacement for the unit except to the extent treated as resulting in a replacement for another forest land unit disposed of at the same time

- (10) In the definition of **revenue account property**, paragraph (b), “acquiring asset)” is replaced by “acquiring asset); or”, and the following is added:
- (c) an ETS unit of the person
- (11) After the definition of **supply**, the following is inserted:
- surrender**, for an ETS unit, is defined in section 4(1) of the Climate Change Response Act 2002

77 Goods and Services Tax Act 1985

Sections 78 to 80 amend the Goods and Services Tax Act 1985.

78 Interpretation

In section 2(1), the following are inserted in their appropriate alphabetical order:

emissions unit means—

- (a) a New Zealand unit;
- (b) a Kyoto unit as defined in section 4(1) of the Climate Change Response Act 2002;
- (c) an approved overseas unit as defined in section 4(1) of the Climate Change Response Act 2002

New Zealand unit means a New Zealand unit as defined in section 4(1) of the Climate Change Response Act 2002

79 Zero-rating of goods

- (1) In section 11(1)(n), “item.” is replaced by “item; or” and the following is added:
- (o) the goods are supplied as consideration for a supply that is chargeable at the rate of 0% under section 11A(1)(s) or (t).
- (2) Subsection (1) applies to supplies made on or after 1 January 2009.

80 Zero-rating of services

- (1) In section 11A(1)(r)(ii), “paragraph (q).” is replaced by “paragraph (q); or” and the following is added:
- (s) the services are a New Zealand unit, and the supply is the transfer of the emissions unit under section 64 of the Climate Change Response Act 2002 or under Part 4, subpart 2 of that Act; or
- (t) the services are an emissions unit, and the supply is the surrender of the emissions unit under section 63 of the Climate Change Response Act 2002; or
- (u) the services are supplied as consideration for a supply that is chargeable at the rate of 0% under paragraph (s) or (t); or

(v) the services are an emissions unit, and the supply is the sale or other disposal of the emissions unit.

(2) Subsection (1) applies to supplies made on or after 1 January 2009.

81 Amendments to Personal Property Securities Act 1999

(1) This section amends the Personal Property Securities Act 1999.

(2) Section 16(1) is amended by inserting the following definition in its appropriate alphabetical order:

emissions unit means a unit as defined in section 4(1) of the Climate Change Response Act 2002

(3) The definition of **investment security** in section 16(1) is amended by repealing paragraph (a) and substituting the following paragraph:

(a) means—

(i) a writing (whether or not in the form of a security certificate) that is recognised in the place in which it is issued or dealt with as evidencing a futures contract, or a warrant or option or share, right to participate, or other interest in property or an enterprise, or that evidences an obligation of the issuer, and that, in the ordinary course of business, is transferred or withdrawn by—

(A) delivery with any necessary endorsement, assignment, or registration in the records of the issuer or agent of the issuer, or by compliance with restrictions on transfer or withdrawal; or

(B) an entry in the records of a clearing house or securities depository; or

(C) an entry in the records maintained for that purpose by or on behalf of the issuer; or

(D) an entry in the records maintained for that purpose by or on behalf of the nominee;

(ii) an emissions unit; but

(4) Section 18(1) is amended by omitting “takes possession of an investment security” and substitutes “takes possession of an investment security, other than an emissions unit,”.

(5) Section 18 is amended by inserting the following subsection after subsection (1):

(1A) For the purposes of this Act, a person takes possession of an investment security that is an emissions unit if the emissions unit is, in the ordinary course of business,—

- (a) traded or settled through a clearing house or securities depository, if the clearing house or securities depository, as the case may be, records the interest of the person in the emissions unit:
- (b) not traded or settled through a clearing house or securities depository, if the unit register established under section 18 of the Climate Change Response Act 2002 records the name of the person as the possessor of the unit:
- (c) held by a nominee, if the records of the nominee record the interest of the person in the emissions unit.

Schedule
New Schedules 3 and 4 added

s 52

Schedule 3

Activities with respect to which persons must be participants

ss 2A, 4(1), 18CC, 18CD, 30F, 54 to 56,
59, 60, 62, 63, 65, 67, 73, 74, 76, 89, 92,
107, 118, 129, 150, 157, 158, 160, 168,
180 to 182, 186, 187, 196, 198, 201, 202,
204 to 207, 213, 216 to 219, 221

Part 1
Forestry

(applies on and after 1 January 2008)

Deforesting pre-1990 forest land other than exempt land, if the area deforested is more than 2 hectares in the 5-year period commencing on 1 January 2008, or in any subsequent 5-year period after that.

Part 2
Liquid fossil fuels

(applies, 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 1996; 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

(applies 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.

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.

Part 4

Industrial processes

Subpart 1

(applies 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.

Producing cable using a nitrogen cure process.

Subpart 2

(applies, subject to sections 218 and 219, on and after 1 January 2011)

Importing sulphur hexafluoride, including sulphur hexafluoride contained in goods.

Importing hydro fluorocarbons or per fluorocarbons, including hydro fluorocarbons or per fluorocarbons contained in goods, other than goods that—

- (a) are household goods, or other effects of a passenger of a ship or aircraft (accompanied or unaccompanied), that are not intended for gift, sale, or exchange; or
- (b) have medical uses necessary for human health, including metered dose inhalers.

Manufacturing sulphur hexafluoride, hydro fluorocarbons or per fluorocarbons, 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)

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)

Purchasing, other than for on-selling, synthetic fertiliser containing nitrogen.

Subpart 3—Animals (processor)

(applies, subject to sections 218 and 219, on and after 1 January 2011 unless subpart 4 brought into force)

Slaughtering ruminant animals, pigs, horses, or poultry by a person who—

- (a) is the operator of a risk management programme registered under the Animal Products Act 1999; and
- (b) is not a retail butcher, as defined in section 4(1) of the Animal Products Act 1999.

Dairy processing of milk or colostrum.

Subpart 4—Animals (farmer)

(applies, subject to sections 218 and 219, from 1 January 2011, if determined by Order in Council)

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

(applies, 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**

ss 2A, 4(1), 18CC, 18CD, 54, 57, 59, 62,
63, 65 to 67, 73, 74, 76, 89, 92, 107, 118,
143, 150, 154, 157, 160 to 162, 167, 168,
182, 187 to 193, 197 to 202, 208, 221

Part 1**Forestry removal activities**

(applies 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 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; 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; and
- (c) any prescribed threshold is met.

Subpart 3

(applies, subject to sections 218, 219, and 220, on and after 1 January 2011)

Exporting hydro fluorocarbons, per fluorocarbons, or sulphur hexafluoride, including hydro fluorocarbons, per fluorocarbons, or sulphur hexafluoride contained in goods, where any prescribed threshold is met.

Destroying hydro fluorocarbons, per fluorocarbons, or sulphur hexafluoride where any prescribed threshold is met.

Part 3

Liquid fossil fuels

(applies, subject to sections 218, 219, and 221, on and after 1 January 2008)

Purchasing obligation jet fuel from 1 or more participants who carry out an activity listed in Part 2 of Schedule 3, if the obligation jet fuel purchased exceeds 10 million litres per year.

Part 4

Stationary energy

(applies 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

Subpart 1—Fertiliser

(applies, subject to sections 218 and 219, if determined by Order in Council)

Purchasing, other than for on-selling, synthetic fertiliser containing nitrogen, where the total synthetic fertiliser purchased exceeds the prescribed amount.

Subpart 2—Animals

(applies, subject to sections 218 and 219, if determined by Order in Council)

Farming, raising, growing, or keeping ruminant animals—

- (a) for reward; or
- (b) for the purpose of trade in those animals, or in animal material or animal products taken or derived from those animals; and
- (c) where the total number of animals, or emissions from those animals, exceeds the prescribed amount.

Reprints notes

1 *General*

This is a reprint of the Climate Change Response (Emissions Trading) Amendment Act 2008 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22): section 279

Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89): section 103

Climate Change Response Amendment Act 2011 (2011 No 15): section 19