



Progressing an Order in Council to defer NZ ETS reporting obligations for animals-farmer activities

Date Submitted:	28 April 2023	Tracking #: BRF-3129	
Security Level	In Confidence	MfE Priority:	Urgent

	Action sought:	Response by:
Hon James SHAW, Minister of Climate Change	Feedback on recommendations	1 May 2023

Actions for Minister's Office Staff	<p>Return the signed report to MfE.</p> <p>Forward this report to the Minister of Agriculture.</p>
-------------------------------------	--

Key contacts

Position	Name	Cell phone	1st contact
Principal Author	Angela Christensen	Section 9(2)(a)	
Responsible Manager	Kara Lok	Section 9(2)(a)	✓
Director	Sara Clarke	Section 9(2)(a)	

NOTE - PAGE BREAK HERE – TEXT STARTS NEXT PAGE

Progressing an Order in Council to defer NZ ETS reporting obligations for animals-farmer activities

Key Messages

1. Since the agricultural emissions pricing work programme has progressed, the intention has been to repeal the New Zealand Emissions Trading Scheme (NZ ETS) animals-farmer reporting and surrender obligations from the Climate Change Response Act 2002 (CCRA) and replace these with the alternative pricing system. However, due to delays, the relevant provisions in the CCRA cannot be repealed in time and therefore must be deferred.
2. The CCRA requires reporting for animals-farmer activities from 1 January 2024 with surrender obligations for animals-farmer participants commencing a year later.¹
3. An Order in Council (OiC) deferral needs to be progressed ahead of the General Election to defer the NZ ETS animals-farmer reporting obligations. If this OiC deferral is not progressed ahead of the election, animals-farmer participants will be required to register and report from 1 January 2024 ahead of surrender obligations in 2025 as there is not enough time to progress an OiC deferral post-election.
4. Public consultation is required to satisfy your statutory obligation to consult. It may also assist in obtaining information to support required analysis and Treaty considerations.
5. The timeframes to progress an OiC carry uncertainty due to the election and will be subject to Cabinet availability and Cabinet consultation requirements.

Recommendations

We recommend that you:

- a. **Direct** officials to draft the Cabinet paper seeking approval to publicly consult, prior to the General Election, including combining the consultation with another appropriate work programme, if practicable

Yes/No

¹ CCRA, s 2A(5D) and s 219.

- b. **Agree** that the proposed reporting obligation deferral date for consultation for animals-farmer activities is from 1 January 2024 to 1 January 2026 with surrender obligations commencing a year later. Yes/No
- c. **Agree** that officials should engage with Treaty partners as soon as possible. Yes/No
- d. **Agree** to forward this brief to Minister O'Connor Yes/No

Signature

Sara Clarke Director- Implementation Policy Implementation and Delivery	
Hon James SHAW, Minister of Climate Change	
[Date field]	

Purpose

6. You have requested further advice on the timeframes for progressing the Order in Council (OiC) to defer reporting obligations for animals-farmer activities under the New Zealand Emissions Trading Scheme (NZ ETS). This briefing seeks your agreement to the proposed timeframe.

Context

7. You and Minister O'Connor met with the Prime Minister on 13 April 2023 to discuss how to take forward agricultural emissions pricing. Follow up advice was requested from officials [BRF-3140 refers].
8. Under current legislation (s 2A(5D) and s 219 of the CCRA), NZ ETS animals-farmers reporting obligations are due to commence on 1 January 2024 with surrender obligations commencing one year later.
9. You have agreed [BRF-3039 refers] to progress an OiC to defer reporting obligations for NZ ETS animals-farmer activities from 1 January 2024. This reflects that any legislation creating an alternative agricultural emission pricing system and repealing the relevant NZ ETS backstop from legislation will not be passed by the reporting obligations commencement date.
10. Surrender obligations for fertiliser processors are due to commence on 1 January 2025. While animals-farmer reporting obligations can be deferred from 1 January 2024 to 1 January 2026 by OiC, surrender obligations will still commence for animals-processors on 1 January 2025, unless repealed from legislation.
11. Legislative change is needed if we want to defer surrender obligations entirely for either of fertiliser or animals' activities. This obligation cannot be deferred by OiC and will therefore require legislative change if an alternative fertiliser pricing mechanism is progressed.
12. The following section outlines the process and proposed timeframe for the deferral process.

Analysis and advice

Process for deferral

13. To defer the reporting obligation via OiC, s 2B of the CCRA requires the Minister to consult as well as have regard to particular matters as set out in the CCRA (see paragraph 30). Officials recently provided advice on a proposed approach to consult to defer reporting obligations under the NZ ETS [BRF-2992 refers].

14. Submissions will inform development of a briefing outlining analysis on the matters on which you must have regard under s 2B(5) (see the Financial, regulatory and legislative implications section below).
15. Once you have weighed up the matters under s 2B(5) you can then request Cabinet approval to submit the OiC to defer the reporting obligations to Executive Council for Governor-General approval.

Proposed timeframe

16. The timeframe to progress an OiC to defer reporting obligations for animals-farmer participants is extremely tight due to the election and the obligations the Minister has under s 2B of the CCRA.
17. Officials have outlined a draft timeframe for progressing an OiC prior to the election in table 1 below.

Table 1- Draft timeframe to progress deferral

May/early June 2023	Complete draft consultation material and Cabinet paper, undertake agency consultation. Ministerial consultation on Cabinet paper and consultation material (2 weeks prior to Cab committee date).
June 2023	Cabinet approval of consultation.
June/ early July 2023	Public consultation (4 weeks).
August 2023	Analyse results of consultation. Prepare policy decision Cabinet paper and undertake agency consultation. Ministerial consultation on Cabinet paper (2 weeks prior to Cabinet committee date).
September 2023	Cabinet consideration of policy decision and authorisation to issue drafting instructions. Note: it may be difficult to obtain a place on the Cabinet agenda immediately prior to the election. It is likely to be very challenging to try to obtain Cabinet policy decisions immediately after the election, and not obtaining decisions until November would leave insufficient time to complete the remaining drafting and Cabinet approval steps.

October- November 2023	<p>Election 14 October</p> <p>Prepare Cabinet paper for submission of OiC and undertake agency consultation.</p> <p>Ministerial consultation on draft Cabinet paper for submission of OiC (2 weeks prior to Cabinet committee (subject to change)).</p>
Early Dec 2023	<p>Cabinet approval to submit the OiC to Executive Council for Governor-General approval.</p> <p>OiC is approved and gazetted. 28-day period would need to be waived so the OiC can enter into force prior to 1 January.</p>
1 Jan 2024	Reporting obligations commence unless deferred.
1 Jan 2025	Surrender obligations commence (at farm level for animals' activities unless deferred).

18. There is significant risk in delaying commencement of the deferral process for the making of an OiC beyond the end of May due to the election and Cabinet processes. Even with the proposed timeframes in this briefing, it may still be challenging to obtain space on the Cabinet agenda immediately preceding the election. Not obtaining decisions until after the election would leave insufficient time to complete the remaining drafting and Cabinet approval steps necessary to make the OiC in 2023 and before the reporting obligation commences.

19. Officials consider that there could be some time-savings by dropping a Cabinet step if the Cabinet approval to consult paper also contained a recommendation for Cabinet to make a delegation to the Minister to authorise drafting following consultation. If there was agreement, this would remove an extra Cabinet step to authorise drafting following consultation and would save some time. It must be noted however that this hinges on Cabinet’s agreement.

Implications of not progressing the OIC ahead of the election

20. If the OiC to defer farm-level NZ ETS reporting obligations for animals’ activities is not actioned ahead of the election the obligations will commence for emissions from 1 January 2024. This means:

- I. Participants carrying out these activities will be required to register as a participant with the Environmental Protection Authority (EPA) and open a holding account (if they do not already have one).²

² CCRA, s 2B(5D) and s 56.

- II. Participants will need to report their emissions from 1 January 2024 ahead of surrender obligations commencing a year later on 1 January 2025.³ There is likely to be confusion and questions to the EPA about how to comply given the regulations specifying how to calculate emissions do not exist.
 - III. Participants will be required to surrender NZ ETS units for their emissions from 1 January 2025. There are no regulations specifying the allocative baseline for the allocation of units for agriculture activities, and without these regulations participants will not be able to apply for an allocation of units to offset their surrender liability.
 - IV. There may be some instances where participants may need to submit a return prior to the 2025 reporting window, for example when ceasing the activity (refer s 118).
21. While it is an offence to fail to comply with these requirements under the CCRA without reasonable excuse, the absence of prescribed requirements is likely to provide such an excuse (refer s 129).

Other considerations

Treaty analysis

22. We have heard from Māori submitters during the consultation process last year on the alternative agricultural emissions pricing system that reporting requirements can be challenging for Māori, particularly with tight timeframes. Submitters indicated that new obligations require additional support such as:
- training and administrative support;
 - legal support; and
 - education and advice.
23. If the reporting obligations are not deferred, a greater number of Māori farmers will meet the animals-farmer definition under the CCRA compared to the bespoke farm-level levy thresholds and will be required to begin reporting on 1 January 2024. This could have significant impacts on the ability of Māori farmers to participate.

³ CCRA, section s 62.

Section 9(2)(h)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Financial, regulatory and legislative implications

27. When making an OiC, section 2B(5) of the CCRA states:

The Minister must have regard to—

(a) the need for the EPA to be able to verify information contained in emissions returns of the persons who will become participants in an activity listed in the subpart by operation of the order; and

(b) the likelihood that, as a result of becoming participants by operation of the order, persons carrying out an activity listed in the subpart will reduce their emissions; and

(c) the desirability of minimising—

(i) the compliance and administration costs of persons who will become participants in an activity listed in the subpart by operation of the order; and

(ii) the administration costs of the Crown in administering the emissions trading scheme.

28. As the intent was to repeal these obligations from the CCRA, officials have not yet carried out the required analysis to meet section 2B(5). Undertaking consultation will help to inform the analysis and provide better certainty around the matters the Minister must have regard to.

29. Officials will provide a more fulsome analysis of these matters to you following consultation but at a high level:

- Deferring reporting to 2026 and surrender obligations to 2027 would give enough time for the alternative reporting system to be developed [BRF-3140/B23-0285 refers] and these animals-farmer requirements in the CCRA repealed.
- Officials consider that deferring the obligations would also allow for more time to develop and stand up a reporting and surrender system, including the development of secondary legislation and ICT systems required if animals-farmer participants are required to report and surrender their emissions in the NZ ETS.
- The obligations include minor sectors which is inconsistent with the current direction of policy.
- The EPA currently does not have the ability to stand up the reporting and internal infrastructure in time to support the reporting obligations for around 40,000-50,000 animals-farmers.
- While it is recognised that reporting emissions supports behaviour change, without data standards, this would be difficult to measure.

Next steps

30. Officials will discuss this briefing with you at our weekly officials meeting on 1 May. As identified in *Table 1*, if agreed, officials will draft a Cabinet Paper to receive approval to consult.

31. We recommend you forward this briefing to Minister O'Connor.