



Options to progress an OiC to defer reporting obligations under the NZ ETS for animals-farmer activities

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Security Level	In-Confidence	MfE Priority:	Urgent

	Action sought:	Response by:
Hon James SHAW, Minister of Climate Change	Feedback on recommendations	15 May 2023

Actions for Minister's Office Staff	<p>Forward this report to the Minister of Agriculture and Prime Minister.</p> <p>Return the signed report to MfE.</p>
Number of appendices and attachments	Appendix 1- Risks

Key contacts

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


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Key Messages

1. The Climate Change Response Act 2002 requires animals-farmer participants to register and report from 1 January 2024 ahead of surrender obligations being introduced a year later. An Order in Council (OiC) deferral needs to be progressed in 2023 to defer the New Zealand Emissions Trading Scheme (NZ ETS) reporting obligations for animals-farmer activities. If the OiC deferral is not in place by the end of the year, up to 50,000 animals-farmer participants will be required to register and report from 1 January 2024.
2. The participants required to meet the NZ ETS reporting obligations are different from those captured by the government's farm-level levy proposal and the Environmental Protection Authority has no capability to implement the NZ ETS animals-farmer obligations by 1 January 2024.
3. The timeframes to progress any of the options contained in this brief are extremely tight and any slippage increases the risk of the OiC not being made prior to 1 January 2024.
4. You requested additional options to progress an OiC, including post-election and without consultation. Officials have included two options to meet this request. The risks associated with these options are included in Appendix 1.
5. Officials recommend progressing an OiC prior to the election with consultation as required by s 2B(6) of the Climate Change Response Act 2002. We have provided a third option that includes consultation and is tied to an impending announcement on pricing fertiliser emissions.

Recommendations

- a. Section 9(2)(h)  **Noted**
- b. **Note** that officials consider there is a significant timeframe risk in progressing an Order in Council post-election due to the election and Cabinet processes. **Noted**
- c. **Indicate** which process you wish to follow:
 - i. **Agree** to progress Option A- an Order in Council post-election without consultation.

Yes/No

Or

- ii. **Agree** to progress Option B- an Order in Council pre-election without consultation.

Yes/No

Or

- iii. **Agree** to progress Option C- an Order in Council coupled with the announcement of pricing fertiliser emissions with consultation.

Yes/No

- d. **Note** the risks associated with options A and B (see Appendix 1).

Noted

- e. **Agree** to forward this brief to the Prime Minister and Minister O'Connor.

Yes/No

Signature

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

Purpose

6. You have requested additional advice on alternative options to progress an Order in Council (OiC) to defer reporting obligations for animals-farmer activities under the New Zealand Emissions Trading Scheme (NZ ETS). You expressed the need for the deferral to align with the announcement to price fertiliser emissions. This briefing seeks direction from you to progress the OiC under one of these options.

Context

7. Animals-farmer reporting obligations will begin on 1 January 2024 with surrender obligations commencing one year later (s 2A(5D) and s 219 of the Climate Change Response Act 2002 (CCRA)), unless the date is deferred by an OiC (or the relevant sections are repealed). The relevant provisions in the CCRA cannot be repealed in time and therefore must be deferred.
8. There are significant risks in triggering these obligations, including:
 - a. it is estimated to incorporate up to 50,000 participants as the definition of an animals-farmer is not aligned to the thresholds and sub-sectors for participation that was proposed in the alternative agricultural emissions pricing system (e.g. NZ ETS obligations also capture poultry, horses and pigs); and
 - b. regulations would need to be developed that prescribe the information to be collected by animals-farmer participants, and the methods for calculating emissions;
 - c. the Environmental Protection Authority (EPA) has no existing capability to implement NZ ETS emission reporting for 50,000 farmers; and
 - d. uncertainty for the agricultural sector as to their obligations and how their emissions will be priced.
9. BRF-3129 set out an option to progress an OiC deferral pre-election with consultation. We understand from your feedback on BRF-3129 that you do not support progressing an OiC to defer reporting obligations for animals-farmer activities unless it is aligned with the announcement of pricing fertiliser emissions.
10. You met with officials on 1 May 2023 to discuss BRF-3129. At that meeting, you signalled interest in exploring additional options to progress an OiC deferral, including a post-election option without consultation.
11. This advice lays out three additional options. Officials' advice is that we must undertake consultation to satisfy the statutory obligation required by s 2B(6) of the CCRA.
 - a. Option A- post election without consultation

- b. Option B- pre-election without consultation as part of agricultural emissions package
- c. Option C- pre-election coupled with the agricultural emissions announcement with consultation.

Analysis and advice

12. Section 65 of the CCRA requires that participants must report to the EPA on activities carried out. This means that from 1 January 2024, participants will need to register and monitor their emissions with annual emissions returns for that period due in 2025. This means that any activity carried out in 2024 would trigger reporting requirements. It should be noted that there is not a system or legislation (primary and secondary) currently in place to support farmers to meet this requirement.
13. Below are three additional options to progress an OiC to defer reporting obligations for animals-farmer participants set to commence from 1 January 2024 under the NZ ETS.
14. The timeframes to progress any of the options contained in this brief are extremely tight and any slippage increases the risk of the OiC not being made prior to 1 January 2024.
15. 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. This process is built into Table 3. It must be noted however that this hinges on Cabinet’s agreement. If agreed, this would mitigate some of the risks associated with the post-election timeframe under option A.
16. Risks associated with options A and B are summarised in Appendix 1.

Option A- post-election without consultation

17. You requested a post-election timeframe option to progress an OiC without consultation. Officials have outlined this as Option A in Table 1 below.

Table 1- Option A post-election with no consultation

September 2023	Prepare policy decision Cabinet paper on decision to defer and deferral date.
October 2023	Election 14 October Ministerial consultation on Cabinet paper. Cabinet approval of policy decision and authorisation to issue drafting instructions.
November 2023	OiC is drafted.

	Prepare Cabinet paper for submission of OiC and undertake agency consultation. Ministerial consultation on Cabinet paper for submission of OiC.
Early December 2023	Cabinet approval to submit the OiC to Executive Council for Governor-General approval. OiC is approved and gazetted. 28-day period would need to be waived so the OiC can enter into force prior to 1 January.
1 January 2024	Reporting obligations commence unless deferred.

18. There is a significant risk in delaying commencement of the deferral process for the making of an OiC until post-election due to limited time for Cabinet processes. It may be challenging to obtain space on the Cabinet agenda and complete the remaining drafting and Cabinet approval steps necessary to make the OiC in 2023 prior to the commencement of reporting obligations.
19. Support will be needed to secure a Cabinet date post-election to alleviate the risk of not having enough time for the remaining steps necessary for the drafting and Cabinet approval steps.
20. Section 9(2)(h)

Option B- pre-election without consultation as part of the agricultural emissions package

21. Officials are progressing an alternative agricultural emissions package prior to the election [BRF-3140 refers].
22. Option B outlined in Table 2 below combines the OiC deferral process with progressing the agricultural emissions package. The timeframes proposed are dependent on the timing of the announcement of the alternative agricultural emissions package.

Table 2- Option B pre-election without consultation as part of the agricultural emissions package

May 2023	Prepare policy decision Cabinet Paper on decision to defer and deferral date in line with the agricultural package announcements.
June 2023	Complete Cabinet paper and undertake agency consultation.
July 2023	Ministerial consultation on Cabinet paper.
August 2023	Cabinet approval of policy decision and authorisation to issue drafting instructions. OiC is drafted.

Late August 2023	Prepare Cabinet paper for submission of OiC and undertake agency consultation. Ministerial consultation on Cabinet paper for submission of OiC.
September 2023	Cabinet approval to submit the OiC to Executive Council for Governor-General approval. OiC is approved and gazetted.
October 2023	Election 14 October
1 January 2024	Reporting obligations commence unless deferred.

23. Combining the OiC deferral with the pre-election policy decision Cabinet paper would mitigate some of the timeframe risks associated with a post-election process and could accommodate the drafting of the OiC to be progressed prior to the election. However, due to the election, it may be challenging to secure space on the Cabinet agenda.

24. The timeframes for this option are dependent on the timing of an announcement on the alternative agricultural emissions package, but this option appears to mitigate your concern around progressing an OiC ahead of any announcement. However, as the timeframes are dependent on the timing of the announcement, further refinement of the timeframe will need to be done to align and sequence the OiC deferral process once an announcement is made.

25. Section 9(2)(h)

Option C- pre-election coupled with the agricultural emissions announcement with consultation

26. Your feedback on BRF-3129 did not support progressing an OiC pre-election and officials understand that a key driver for this is related to the impending announcement of pricing fertiliser emissions.

27. Officials’ analysis considers that this concern could be addressed by coupling the OiC deferral consultation with the agricultural emissions announcement and would still allow enough time to undertake consultation as required under s 2B(6) of the CCRA. Officials have outlined this scenario as Option C in Table 3 below.

28. Note that the timeframes proposed are dependent on the timing of the agricultural emissions announcement. Further refinement of the timeframe will need to be done to align and sequence the OiC deferral process once an announcement is made.

Table 3- Option C pre-election coupled with agricultural emissions announcement

June 2023	<p>Ministerial consultation on Cabinet paper and consultation material (2 weeks prior to Cabinet committee date).</p> <p>Cabinet approval of announcement of agricultural emissions including consultation material on OiC deferral and a recommendation for Cabinet to make a delegation to the Minister to make policy decision and authorisation to issue drafting instructions following consultation.</p>
July 2023	Public consultation on deferral (4 weeks).
August 2023	<p>Analyse results of consultation and make decision to authorise the issue of drafting instructions.</p> <p>OiC is drafted.</p> <p>Prepare Cabinet paper for submission of OiC and undertake agency consultation.</p> <p>Ministerial consultation on Cabinet paper for submission of OiC.</p>
September 2023	<p>Cabinet approval to submit the OiC to Executive Council for Governor-General approval.</p> <p>OiC is approved and gazetted.</p>
October 2023	Election 14 October
1 January 2024	Reporting obligations commence unless deferred.

29. Section 9(2)(h) [Redacted]

30. Similar to options A and B, due to the election, it may be challenging to secure space on the Cabinet agenda.

Other considerations

Section 9(2)(h)

[Redacted]

[Redacted]

[Redacted]

Next steps

33. Officials will discuss this briefing with you at our weekly officials meeting.
34. We recommend you forward this briefing to Minister O'Connor and the Prime Minister.

Appendix 1: Risks

Timeframe risks

1. The timeframe to progress an Order in Council (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 Climate Change Response Act 2002 (CCRA).
2. There is significant risk in delaying commencement of the deferral process due to the election and Cabinet processes. It may be challenging to obtain space on the Cabinet agenda immediately preceding and following the election. Not obtaining decisions until after the election could 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 from 1 January 2024.

Section 9(2)(h)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Section 9(2)(h)

If obligations commence

8. 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).
 - ii. The definition of a participant differs between the NZ ETS and that which was proposed in the alternative agricultural emissions pricing system. The NZ ETS definition would capture up to 50,000 farmers.
 - iii. The alternative agricultural emissions pricing system set thresholds as follows:

GST-registered business owners who meet the following emissions thresholds (equivalent to ~200 tonnes CO₂-e per year):

 - 550 stock units (inclusive of sheep, cattle and deer, calculated on a weighted annual average basis), or
 - 50 dairy cattle, or
 - applying over 40 tonnes of nitrogen through fertiliser.
 - iv. Schedule 3 of the CCRA defines an animals-farmer as anyone:

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.*
 - v. Participants will need to report their emissions from 1 January 2024 ahead of surrender obligations commencing a year later on 1 January 2025. It is likely that many farmers will not be aware of this requirement and will be unprepared to comply. 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. The EPA does not currently have a work programme in place to meet this reporting obligation.
 - vi. 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.

- vii. 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).

Reputational risks

9. It should be noted that there is reputational risk for Government by having a 1 January 2024 mandatory reporting obligation under the NZ ETS with no ability to implement it by this date.
10. Given an alternative agricultural emissions pricing system was being progressed, communication with the sector regarding the NZ ETS obligations was not prioritised. Recent media indicates that some in the sector are aware of this obligation, which may create confusion and uncertainty as time passes without communication on this requirement.

Caretaker convention

11. After the election on 14 October until the next government (and Ministers) are appointed, the caretaker convention will apply. During this period, governments have traditionally constrained their actions until a new administration is appointed.
12. If the election outcome is clear, then the outgoing Minister will follow the advice of the incoming government. If there is an unclear outcome, decisions taken and specific policy determined before the start of the caretaker period may be implemented by a caretaker government. However, if a matter arises that would usually require a decision, such as those concerning new policy initiatives, changes to existing policy or a potentially controversial issue, the Minister will need to carefully consider their obligation, weighing up the need to make a decision alongside its significance and the impact of the decision.