



Te Uru Rākau
Forestry New Zealand



Ministry for the
Environment
Manatū Mo Te Taiao

17 April 2020

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Progressing Cabinet decisions on the New Zealand Emissions Trading Scheme for Forestry in light of COVID-19

Purpose:

This briefing provides advice on progressing amendments to the Climate Change (Forestry Sector) Regulations 2008 in light of the impact of the COVID-19 pandemic on current timelines.

s9(2)(f)(iv)

Minister	Action Required:	Minister's Deadline
Minister of Forestry	Note and agree the recommendations contained in this briefing.	As soon as possible.
Minister for Climate Change		

Contact for telephone discussion

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Key Messages

Delivery of regulations for the New Zealand Emissions Trading Scheme (NZ ETS) forestry changes at risk under current timeframe

1. Amendments to the Climate Change (Forestry Sector) Regulations 2008 are required to implement the new forestry policies in the Climate Change Response (Emissions Trading Reform) Amendment Bill ('the Bill') on 1 January 2022.
2. In order to meet this timeframe, policy decisions for the regulations must be agreed by Cabinet no later than June 2020, and the Parliamentary Counsel Office (PCO) must be available for drafting throughout the remainder of 2020 and early in 2021, for Gazettal on 1 October 2021.
3. Work is continuing on policy development for the regulations; however, in the current COVID-19 response environment, delivery of the regulations in time to come into force on 1 January 2022, is at considerable risk. This is due to three key factors:
 - With Cabinet's focus on the COVID-19 response and recovery, there is uncertainty regarding Cabinet's availability to consider regulatory policy proposals over the next few months. Under the existing indicative Cabinet Committee timetable the most feasible date for Cabinet Committee consideration is 4 June 2020¹. If policy decisions are not able to be made on this date it is unclear when another opportunity will arise prior to the election;
 - The forestry regulations are highly technical and PCO cannot confirm that they will have availability for drafting throughout 2020 and early 2021 due to their time being prioritised for COVID-19 recovery. Given the level of detail required, the regulations will require rigorous drafting, testing and reviewing following policy decisions; and
 - External inputs into the policy design have also been delayed, including the Cost-Benefit Analysis, research to calculate the clear-fell harvest penalty for permanent forests, and a technical advisory group inputting into detailed policy design for averaging and temporary adverse events. It is unlikely that these inputs can now be delivered in time for a 4 June Cabinet Committee date.
4. If the forestry provisions in the Bill come into force but supporting regulations are not in place, neither participants, nor the Crown, will be able to implement the new legislation.

¹ This is the latest date prior to the pre-election period beginning 19 June 2020.

5. To address the delivery risk for the regulations there are two potential courses of action, both of which require amendments to the Bill:
 - *Option 1 – Defer policy decisions until early 2021 and defer implementation of the major forestry policies in the Bill, as well as the regulations, to January 2023.* To make this option viable you will need to seek Cabinet approval to extend the implementation date of major forestry policies in the Bill (e.g. mandatory averaging accounting, permanent forestry and temporary adverse events) and the forestry regulations from 1 January 2022 to 1 January 2023. Transitional provisions in the Bill will need amending to give effect to this extension. Cabinet decisions for the full forestry regulatory package would be sought in early 2021; or
 - *Option 2 – Seek high level policy decisions in June 2020 and amend the Bill to provide flexibility in the implementation date.* To make this option viable, we recommend you seek agreement from Cabinet to amend the Bill so that the major forestry policies in the Bill, as well as the forestry regulations, come into effect either by Order in Council or on 1 January 2023, whichever is earlier. We also recommend you seek Cabinet agreement to delegate decision making on the detailed design of the regulations to the Minister for Climate Change, Minister of Forestry, and Minister of Finance. This would allow some drafting of the regulations to begin in 2020 (subject to PCO availability).
6. Option 1 provides the most certainty for participants and time for thorough testing of the regulations prior to implementation. We do not expect Option 1 to impact projected afforestation rates as current data suggests that land owners are planting in anticipation of averaging and not waiting for the detailed regulations.
7. Option 2 retains the potential to meet the current January 2022 implementation date and will mean the policy framework for the regulations can be decided prior to the election. However, achieving this implementation date is not certain and will require final detailed policy decisions after the pre-election period, as well as drafting capacity from PCO. This option also reduces the time available for testing of the regulations prior to Gazettal.

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Recommendations

11. The Ministry for Primary Industries and Ministry for the Environment recommend that you:

Options to mitigate delivery risk of the forestry regulations

- a) **Note** that delivering the Climate Change (Forestry Sector) Regulations 2008 in time for implementation on 1 January 2022 is at considerable risk in the COVID-19 environment, due to the uncertainty around both Cabinet availability to make policy decisions by June 2020 and PCO availability to prioritise drafting in 2020 and early in 2021 (competing with other high priority drafting requirements such as Covid-19 recovery).

Noted ✓

- b) **Agree** to your preferred course of action for the forestry regulations:

Option 1 – defer policy decisions to early 2021

- i) Seek Cabinet approval through the Supplementary Order Paper for the Emissions Trading Reform Bill to extend the implementation date for major forestry policies in the Bill and the associated forestry regulations, from 1 January 2022 to 1 January 2023;
- ii) Agree that the transitional provisions in the Climate Change Response (Emissions Trading Reform) Amendment Bill be updated to reflect the change in commencement dates; and
- iii) Agree to commence temporary adverse events liability exemptions from 1 January 2023.

Agreed / Not Agreed

OR

Option 2 – seek high level policy decisions in June 2020

- i) Seek Cabinet approval through the Supplementary Order Paper for the Emissions Trading Reform Bill to amend the Bill so that the major forestry policies, and the forestry regulations, come into effect either by Order in Council (enabling the potential for implementation in January 2022) or on 1 January 2023, whichever is earlier;
- ii) Agree that the transitional provisions in the Climate Change Response (Emissions Trading Reform) Amendment Bill be updated to reflect the potential change in commencement dates;
- iii) Agree that forests registered before 31 December 2022 will retain the option to use stock change accounting, even if an Order in Council is introduced to bring forward implementation to 1 January 2022; and
- iv) Seek Cabinet agreement on high level policy decisions on the regulations in early June, and agreement to delegate authority on the detailed policy design of the regulations to the Minister for Climate Change, Minister of Forestry, and the Minister of Finance.

Agreed / Not Agreed

- c) **Note** that a previous Cabinet decision [CAB-20-MIN-0062 refers] which amended the Bill to make forests that apply by 31 December 2021, and successfully register by 30 June 2022, eligible for the option to use stock change accounting, does not work if implementation is shifted to 1 January 2023.

Noted ✓

- d) **Agree** to seek approval from Cabinet to reverse the previous Cabinet decision noted above so that forests must be registered by 31 December 2022 to be eligible to have the option of using stock change accounting (i.e. mandatory averaging will be from 1 January 2023).

Agreed / Not Agreed

- e) **Note** that participants in the New Zealand Emissions Trading Scheme will not be able to access exemptions from temporary adverse event liabilities until the forestry regulations are in place.

Noted ✓

- f) **Note** that we will deal with the temporary adverse events liabilities issue on a case-by-case basis under both options above, and look at potentially using the existing exemption scheme under section 60 or 60A of the Climate Change Response Act 2002 in cases where temporary adverse events occurring prior to the regulations coming into effect have significantly disadvantaged participants.

Noted ✓

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Noted ✓

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Agreed / Not Agreed

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Julie Collins
Deputy Director-General
Te Uru Rākau

Roger Lincoln
Director, Climate Change
Ministry for the Environment

Hon Shane Jones
Minister of Forestry

/ / 2020

Hon James Shaw
Minister for Climate Change

19/4/2020/ 2020

This memo has been approved electronically by Roger Lincoln, Director, Climate Change.

PP. This memo has been approved electronically by Oliver Hendrickson, Director, Forestry and Land Management, Te Uru Rākau, on behalf of Julie Collins.

Background

Climate Change (Forestry Sector) Regulations 2008

12. Significant amendments to the Climate Change (Forestry Sector) Regulations 2008 ('the Regulations') are required to implement the major forestry policy changes proposed in the Climate Change Response (Emissions Trading Reform) Amendment Bill ('the Bill').
13. In February 2020, Cabinet approved extending the implementation date of major forestry policy decisions in the Bill and subsequently, the associated regulations, from 1 January 2021 to 1 January 2022².
14. To meet the 1 January 2022 implementation date, amendments to the Regulations would need to be Gazetted by 1 October 2021. This would require policy decisions by Cabinet no later than June 2020 to allow enough time for drafting by Parliamentary Counsel Office (PCO) and testing, of those regulations, in late 2020 and early 2021.

The COVID-19 pandemic has created a delivery risk for the current January 2022 implementation date for the forestry regulations

15. We have reviewed the timeline for delivering the amendments to the Regulations in light of the impact the COVID-19 pandemic is having on Parliamentary and agency priorities and timelines.
16. Work is continuing on policy development for the regulations; however, in the current COVID-19 response environment, delivery of the regulations in time to come into force on 1 January 2022 is at considerable risk.
17. With Cabinet's focus on the COVID-19 response and recovery, there is also uncertainty regarding Cabinet's availability to consider regulatory policy proposals over the next few months. Under the existing indicative Cabinet Committee timetable the most feasible date for Cabinet Committee consideration is 4 June 2020³. If policy decisions are not able to be made on this date it is unclear when another opportunity will arise prior to the election and it will be too late to amend the Bill to extend timeframes at that point.
18. The forestry regulations are highly technical and PCO cannot confirm that they will have availability for drafting throughout 2020 and early 2021 due to the COVID-19 recovery and post-election priorities. Given the level of detail required, the regulations will require rigorous drafting, testing and reviewing following policy decisions.

² The later than anticipated introduction of the Bill meant there was insufficient time to prepare the Regulations in time for implementation on 1 January 2021. There was a risk that the Bill would be enacted but regulations would not be in place to guide implementation of major New Zealand Emissions Trading Scheme forestry policy decisions. Following Cabinet approval, a recommendation was included in the Departmental Report to extend the implementation date of major forestry policies in the Bill (and subsequently the associated regulations), for 12 months to align the legislation and regulations.

³ This is the latest date prior to the pre-election period beginning 19 June 2020.

19. Exacerbating this, external inputs into the policy proposals have also been delayed. This includes the cost-benefit analysis, research to calculate the clear-fell harvest penalty for permanent forests, and a technical advisory group inputting into detailed policy design for averaging and temporary adverse events⁴. It is unlikely that these inputs can now be delivered in time for a 4 June Cabinet Committee date.

We have identified two potential courses of action to mitigate delivery risk for the forestry regulations

Option 1 – defer policy decisions until early 2021 and defer implementation of the major forestry policies in the Bill, and the regulations, to January 2023.

20. This option would provide the most certainty to participants regarding when policies will come into effect, and will also enable more thorough testing of the regulations prior to implementation.
21. Should you choose this option we recommend that you seek Cabinet agreement to extend the implementation date of major forestry policy decisions in the Bill (e.g. mandatory averaging, permanent forestry and temporary adverse events) and subsequently, the associated regulations, from 1 January 2022 to 1 January 2023⁵.
22. Cabinet decisions on the regulatory settings would be sought at the end of Quarter 1 or early Quarter 2 of 2021, to enable drafting and testing in advance of Gazettal.
23. Extending the implementation date to 2023 will ensure there is sufficient time for drafting and testing following policy decisions, and making sure the Regulations are fit-for-purpose. This was raised as a matter of importance by New Zealand Emissions Trading Scheme (NZ ETS) forestry participants during consultation on the forestry regulations and in submissions on the Bill.
24. We do not expect deferring the implementation of major forestry policies and associated regulations to 1 January 2023 to impact land owners' intentions to afforest or projected afforestation rates. Nationwide restrictions due to COVID-19 are more likely to influence winter 2020 planting due to issues around financial liquidity, nursery seed and seedling stocks, planting crews, and land preparation.
25. Afforestation rates are slightly above 2019 projected levels and suggests that land owners are already planting in anticipation of mandatory averaging, and not waiting for the detailed regulations⁶.

⁴ The technical advisory group is built from a group of independent forestry and ETS practitioners. Te Uru Rākau is now needing to reconfirm their availability given other pressing demands on their time as a result of COVID-19.

⁵ These forestry policy decisions would be the same as those scheduled to commence on 1 January 2022.

⁶ According to the latest National Exotic Forest Description, afforestation is estimated at around 22,000 hectares. In addition, land owners have had a clear signal that any afforestation planted from 2019 will be eligible for forest averaging. Participants will also be reassured that there will be an opportunity to claim units back to the start of 2018 (the current Mandatory Emissions Return Period).

Option 2 – seek high level policy decisions in June 2020 and amend the ETR Bill to provide flexibility in the implementation date

26. This option would retain the potential to meet the January 2022 implementation date and would see high level policy decisions being made prior to the election.
27. To mitigate against the risk of PCO not being available for drafting, we recommend you seek agreement from Cabinet (via the Supplementary Order Paper Cabinet paper) to amend the ETR Bill so that the major forestry policies in the Bill that require regulations, such as averaging, as well as the forestry regulations, come into effect either by Order in Council or on 1 January 2023, whichever is earlier. This would enable implementation of the regulations in January 2022 by Order in Council if drafting is completed in time and provides a backstop should this date become unworkable.
28. We also recommend that you seek delegated authority from Cabinet in June 2020 for the Minister for Climate Change, Minister of Forestry, and Minister of Finance to make decisions on the detailed design of the regulations. This would allow time for external providers to complete their inputs into the detailed policy design, and drafting of some of the regulations could begin in 2020 (subject to PCO availability).
29. Drafting time with PCO in the latter half of 2020 and in early 2021 will be particularly important to achieve a January 2022 implementation date. Our understanding is that PCO is unlikely to have capacity prior to February unless the regulations are made a priority.

Both options will require changes to the implementation date of some forestry policies in the Bill, as well as the regulations, to 1 January 2023

Changes to the Bill will be needed to ensure transitional arrangements are in place

30. Currently the transitional provisions in the Bill are premised on the new rules and accounting approaches coming into force on 1 January 2022 and forests being registered into the new activities (e.g. mandatory averaging accounting, permanent forestry) before the end of the current reporting period (from 1 January 2018 to 31 December 2022). This means that participants are able to claim units back to 1 January 2018 or when the forest was established (if later) without special rules being created.
31. Because both options above mean a change to the implementation date in the Bill to January 2023, the new forestry policies would commence in the next (rather than the current) mandatory reporting period, which starts on 1 January 2023.

32. To enable smooth introduction, and ensure those who registered under the currently announced settings are not disadvantaged⁷ by the later implementation date, some of the transitional provisions⁸ in the Bill may need to be amended in the Supplementary Order Paper (SOP) to be introduced to the Bill at the Committee of the Whole stage, in May/June.
33. We suggest, regardless of when the regulations enter into force, that the same optionality to choose stock change or averaging accounting is extended to forests registered before 31 December 2022 as is offered for forests registered in 2019, 2020 and 2021. This will provide certainty for the forestry and land owning sectors around when mandatory averaging will commence, and that there will be no 'rush to register' if the decision is made to bring the date forward to 1 January 2022 (if you choose Option 2).
34. Linked to the above, in the Cabinet paper on the Departmental Report to the Bill⁹ [CAB-20-MIN-0062 refers], it was agreed that optional averaging would be available to those forests where the application to register had been received by 31 December 2021 and the registration approved by 30 June 2022. This change was made to give those planting forests in 2021 a longer period to prepare their applications.
35. However, it won't be possible to apply this approach at the end of the mandatory reporting period as it would require a substantively different approach to registering forest into the NZ ETS.
36. Because both mitigation options above will amend the Bill to have implementation on 1 January 2023, we recommend reversing the earlier decision (refer paragraph 34) and returning to a deadline for registrations to be approved by 31 December 2022 in order to be eligible for the option of using stock change accounting.
37. We see no particular disadvantage in this instance as planting late in any mandatory reporting period results in these registration challenges. Participants planting late in the mandatory reporting period and trying, but failing to register into the NZ ETS, lose a small number of carbon units if they are registered in next MERP.
38. Furthermore, under the approach agreed in the Departmental Report, the small areas of forests which (and few participants who) may be unable to register in late 2022 will be subject to averaging regardless of whether they register in 2022 or 2023. This problem could be mitigated by communicating to participants the need to register forests established before 2022 well ahead of the end of the MERP.

⁷ For example, for by not being able to claim units back to when the forest was planted.

⁸ For example, transition of forests in the Permanent Forest Sink Initiative to permanent forestry.

⁹ *Policy decisions for the Climate Change Response (Emissions Trading Reform) Amendment Bill Departmental Report – Forestry*

Impact on Climate Change Information System (CCIS) rebuild of delaying implementation

39. The CCIS needs to be decommissioned and replaced by mid-2022 due to security risks and vendor support ceasing. We anticipate that the elements of the IT system to support new forestry policies would go live in 2023.
40. In order to launch elements of the new IT system by mid-2022, core requirements of the new system must be determined before the end of 2020. This creates a risk that the final decisions on regulatory policy may necessitate changes to some core requirements.
41. However, officials consider this risk to system delivery to be low, as core requirements for the CCIS rebuild are unlikely to be impacted by proposed policy decisions. Policy changes are expected to be built upon the core requirements and subsequent architecture and design of the new IT system.
42. Officials will also work to minimise this risk as much as possible, ensuring that regulatory and system design is a collaborative process to identify and manage any problems as they arise. In the short-term, we will investigate whether any minor and technical changes to the Bill are required to provide additional clarity for the CCIS rebuild.

Impact on temporary adverse event liability exemptions if the implementation dates are extended

43. Officials are currently progressing work on extending temporary adverse event (TAE) liability exemptions¹⁰ to existing stock change forests in the NZ ETS as directed. It is planned to include this amendment in the SOP in May/June.
44. Should the implementation date be extended to January 2023, the TAE exemption regulations would not be in place until 1 January 2023. Existing stock change participants would therefore continue to be required to surrender NZUs for the carbon lost in an adverse event until that time. Participants who plan to transition to averaging would also be required to surrender NZUs for carbon loss if they submit an emissions return before 1 January 2023.
45. We consider it likely that participants have registered in the NZ ETS since 2019 in order to transition to averaging accounting when it becomes available. It is also likely that these participants expect that TAEs will be covered during this time. These participants may not have adequately prepared for carbon liabilities that may arise from adverse events (though this will be no larger than the units received for the forest).

¹⁰ These exemptions exempt participants from the liabilities that arise from the carbon lost in their forests as a result of an adverse event.

46. However, our understanding is that the majority of adverse events affect less than 5 hectares and occur every 1-5 years in most forests. It is therefore unlikely that participants will be significantly affected by liabilities from adverse events before 2023. It is also common that liabilities are 'netted out' during the final mandatory return in a MERP and, as such, result in a reduction in units earned for the participant, rather than a direct and immediate cost.
47. The passage of the Bill is already under significant pressure and is likely to be further constrained by the impact of COVID-19. In particular, the availability of PCO to draft further amendments to the Bill is likely to be constrained by its work on COVID-19 related legislation. There is a chance that any additional amendments will further risk the passage of the Bill through the House.
48. If an adverse event occurred prior to 2023 that significantly disadvantaged a participant, the exemption under the new section 60A in the Bill could be used to address this.
49. The architecture of the NZ ETS currently limits the changes that can be made to a previous MERP. As 2023 is the first year of a new MERP, the options to exempt liabilities for an event in the current 2018-2022 MERP are limited. They would either result in substantive changes to the Bill that would significantly risk its passage through the House, or require multiple regulation-making and Cabinet processes.
50. We therefore recommend that no changes are made to the Bill and temporary adverse event liability exemptions commence from 1 January 2023.

s9(2)(f)(iv)




¹¹ s9(2)(f)(iv)



¹² s9(2)(r)(iv)



s9(2)(f)(iv)



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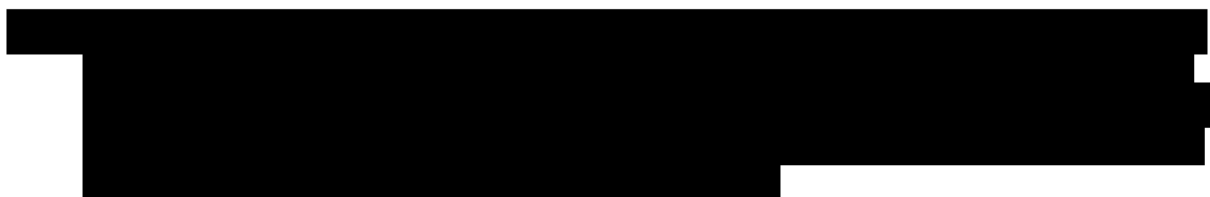
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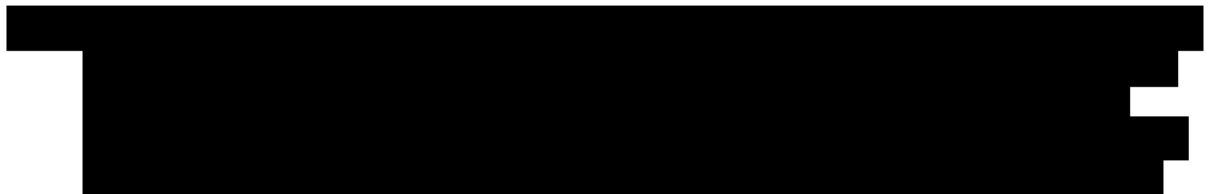
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Next steps

60. Officials are available to discuss any of the recommendations in this briefing.
61. If Ministers agree to these recommendations, Cabinet agreement will be sought via the SOP Cabinet paper to be lodged in May. Decisions on any amendments to the ETR Bill are needed as soon as possible to enable PCO to begin drafting ahead of introducing the SOP Cabinet paper.

¹³ s9(s9(2)(f)(iv)
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