



Further policy approvals: Climate Change Response (Late Payment Penalties and Industrial Allocation) Amendment Bill

Date Submitted:	11 November 2022	Ministry for the Environment #: BRF-2474 Ministry for Primary Industries #: B22-0669	
Security Level:	Policy and Privacy In-Confidence	Priority:	Urgent

	Action sought:	Response by:
Hon James SHAW, Minister of Climate Change Hon Stuart Nash, Minister of Forestry	Agree to proposed policy	15 November 2022

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments:	Nil

Key contacts

Position	Name	Cell phone	1st contact
Ministry for the Environment			
Responsible Manager	Kate Whitwell	s 9(2)(a)	✓
Director	Melody Guy		
Ministry for Primary Industries			
Responsible Manager	Anne Manley	s 9(2)(a)	
Director	Oliver Hendrickson	s 9(2)(a)	

Further policy approvals: Climate Change Response (Late Payment Penalties and Industrial allocation) Amendment Bill

Purpose

1. The purpose of this briefing is to seek your agreement:
 - a. to further policy decisions relating to the Climate Change Response (Late Payment Penalties and Industrial allocation) Amendment Bill (the Bill);¹ and
 - b. to request approval from the Cabinet Legislation Committee for a further decision relating to the Bill.

Recommendations

We recommend that you:

- a. **Note** that the Ministerial sub-group (the Minister of Forestry, Minister of Climate Change, Minister for the Environment, and the Minister of Finance), under delegated authority from Cabinet, has authorised the Minister of Climate Change to make further clarifications to policy decisions in a manner not inconsistent with those decisions.
- b. **Agree** to clarify that the application of the new penalty in scenarios whereby small forestry participants are required to repay units transferred in error, which do not relate to a specific forestry activity (i.e., neither post-1989 or pre-1990 forestry), will use a fixed multiplier of 0.5x the price of carbon (as set in regulations) per unpaid unit (decision 1).

Yes/No
- c. **Agree** to clarify that where an emissions return that has already received a penalty notice for the new penalty is amended by the regulator to correct a unit obligation, and a subsequent penalty is incurred for any additional units owing as a result of the amendment, the subsequent penalty will be based on the subsequent unit amount only, for the purpose of the 25-000-unit threshold for determining whether a participant is a 'small forestry participant' (decision 2).

Yes/No
- d. **Note** that the sub-group of Ministers approved additional clarifications to the legislation to ensure the new penalty can be applied without ambiguity, which

¹ Previously titled 'Climate Change Response (Emissions Trading Scheme and Other Amendments) Amendment Bill'.

included clarifying how the 25,000-unit penalty threshold applies to forestry participants who submit:


- i. emissions returns containing part years; and
- ii. incorrect emissions returns that are subsequently corrected by the regulator.

e. **Note** that the drafting process for the Bill has identified that these issues also remain unclear under the provisions giving effect to the transitional arrangement currently in place for small forestry participants.

f. **Agree** to seek approval from the Cabinet Legislation Committee to extend the additional legislative clarifications outlined above to the provisions giving effect to the transitional arrangement currently in place for small forestry participants, effective from the day after the Bill receives royal assent (decision 3).

Yes/No

Signature

Kate Whitwell Manager – ETS Policy ETS markets	
Anne Manley Manager – Operational policy - forestry incentives Forestry & Land Management	<i>Approved electronically</i>
Hon James SHAW Minister of Climate Change	
Date	
Hon Stuart NASH Minister of Forestry	
Date	

Context

2. The Bill will introduce a new penalty for forestry participants in the New Zealand Emissions Trading Scheme (NZ ETS) with 'low volume' liabilities under 25,000 units (small forestry participants), who fail to surrender or repay units by the due date, for forestry activities occurring from 1 January 2025.
3. This penalty will replace the transitional arrangement currently in place for small forestry participants,² which Cabinet recently agreed to extend to liabilities from forestry activities occurring up until 31 December 2024 [CAB-22-MIN-0293 refers].³
4. Cabinet delegated authority to a Ministerial sub-group (the Minister of Forestry, Minister of Climate Change, Minister for the Environment, and the Minister of Finance) to make final policy decisions on the new penalty [ENV-22-MIN-0029 refers].
5. In making these decisions, the Ministerial sub-group authorised the Minister of Climate Change to make further clarifications to policy decisions relating to the agreed new penalty [B22-0523/BRF-2164 refers], in a manner not inconsistent with those decisions.
6. During the drafting process for the Bill, officials have identified the need for further clarification to decisions relating to:
 - a. the application of the new penalty in certain scenarios that are not explicitly covered (decision 1); and
 - b. a minor and technical clarification to the legislation that determines how the new penalty applies when emissions returns are amended (decision 2).
7. In addition, the drafting process also highlighted the need to extend some minor and technical clarifications previously agreed for the new penalty, to the provisions giving effect to the transitional arrangement currently in place for small forestry participants. Approval from the Cabinet Legislation Committee for these further changes is required (decision 3).

Analysis and advice

The application of the new penalty in certain scenarios (decision 1)

8. The new penalty agreed to by the Ministerial sub-group for small forestry participants who fail to surrender or repay units by the due date applies a fixed multiplier of 0.5x the price of carbon (as set in regulations) per unpaid unit. The multiplier is halved to 0.25x the price of carbon (as set in regulations) for pre-1990 forestry participants.

² Under the transitional arrangement, small forestry participants are subject to the previous 'excess emissions' penalty set at \$30 per unpaid unit, with the ability to be reduced or waived in certain circumstances.

³ The Climate Change Response (Extension of Penalty Transition for Forestry Activities with Low Volume Emissions Liabilities) Amendment Bill 2022 was recently introduced to the House to implement this change.

9. There are some scenarios that may arise whereby a small forestry participant may be required to repay units transferred in error,⁴ which do not relate to a specific forestry activity (i.e., neither post-1989 or pre-1990 forestry).
10. We seek to clarify that in these scenarios, where a small forestry participant fails to repay units transferred in error that do not relate to a specific forestry activity, the new penalty will apply using a fixed multiplier of 0.5x the price of carbon (as set in regulations) per unpaid unit.
11. This is because the rationale for halving the multiplier (to 0.25x) for pre-1990 forestry participants for the purpose of calculating the penalty is not relevant to these types of scenarios. Halving the penalty rate for pre-1990 forestry participants was recommended to recognise their unique circumstances, specifically that they cannot earn units for carbon sequestration in their forests but become liable to surrender units for deforestation.
12. Where a participant is required to repay units transferred in error, officials consider that a penalty for not doing so should more closely reflect the penalty that applies to post-1989 small forestry participants.
13. We seek your approval to make this amendment to the Bill, which is not inconsistent with wider policy decisions.

The application of the new penalty when emissions returns are amended (decision 2)

14. As part of implementing the new penalty, the sub-group of Ministers approved additional clarifications to the legislation to ensure the penalty can be applied without ambiguity.
15. These included clarifying how the 25,000-unit penalty threshold (which determines whether a participant is a 'small forestry participant') applies to forestry participants who submit incorrect emissions returns that are subsequently corrected by the regulator.
16. The decision on this legislative clarification agreed to by the sub-group of Ministers [B22-0523/BRF-2164 refers] does not achieve the intent as worded. This is because it does not specify that this only relates to emissions returns that have *already received* a penalty notice relating to the *new penalty*, which is where this clarification is required.⁵
17. As such, we seek to clarify that where an emissions return that has already received a penalty notice for the new penalty is amended by the regulator to correct a unit obligation, and a subsequent penalty is incurred for any additional units owing as a result of the amendment, the subsequent penalty will be based on the subsequent unit amount only, for the purpose of the 25-000-unit threshold for determining whether a participant is a 'small forestry participant.'

⁴ For example, as required under s 125 of the Climate Change Response Act 2002.

⁵ Section 120A(3) of the Climate Change Response Act 2002 addresses this where a penalty notice

18. We seek your approval to make this amendment to the Bill, which is not inconsistent with wider policy decisions. Amendments to the relevant recommendation will be made to the Cabinet paper.

Extending legislative clarifications to the current transitional arrangement (decision 3)

19. As part of implementing the new penalty, the sub-group of Ministers approved additional clarifications to the legislation to ensure the penalty can be applied without ambiguity. These included clarifying how the 25,000-unit penalty threshold (which determines whether a participant is a 'small forestry participant') applies to forestry participants who submit:

- a. emissions returns containing part years (for example, if NZ ETS registered land is sold part way through the year, the emissions return period would cover part years); and
- b. incorrect emissions returns that are subsequently corrected by the regulator.

20. It has been identified through the drafting process for the Bill that the same ambiguities leading to those changes apply when implementing the transitional arrangement currently in place for small forestry participants. Extending these legislative clarifications to apply under the transitional arrangement will allow the regulator to apply this penalty without ambiguity, which will provide clarity for participants and help them understand their obligations. This will be effective from the day after the Bill receives royal assent, as opposed to only applying to the new penalty once introduced from 1 January 2025.

21. Approval from the Cabinet Legislation Committee is required to implement this decision. Subject to approval, we propose that is drafted into the Bill through the Select Committee process.

Next steps

22. Subject to your approval, officials will update the Cabinet paper seeking approval to introduce the Bill into the House. We will provide a revised version of the paper to your offices and work with them to lodge by 10am Thursday 17 November for Cabinet Legislation Committee on Thursday 24 November.
23. Officials will provide the Minister of Climate change supporting talking points for Cabinet closer to the time.