

**Reprint**  
**as at 26 September 2008**

**Climate Change Response Act 2002**

Public Act 2002 No 40  
Date of assent 18 November 2002

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Climate Change Response Act 2002.

**Part 1**  
**Preliminary provisions**

- 2 Commencement**  
This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders

may be made bringing different provisions into force on different dates.

Section 2: section 1, Part 1, subpart 3 of Part 2, sections 36-49, 50(1)(b), 50(1)(i)-(k), 50(2)-(7), 52, and 53 brought into force, on 1 August 2003, by clause 2 of the Climate Change Response Act Commencement Order 2003 (SR 2003/151).

Section 2: subparts 1 and 2 of Part 2, sections 50(1)(a), (c)-(h), and 51 brought into force, on 19 November 2007, by clause 2 of the Climate Change Response Act Commencement Order 2007 (SR 2007/336).

## **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- (5) Subpart 1 of Part 5 of Schedule 3 applies on and after 1 January 2011, unless repealed under subsection (10) before that date.
- (6) Subpart 3 of Part 5 of Schedule 3 applies on and after 1 January 2011, unless repealed under subsection (11) before that date.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.

Section 2A: inserted, on 26 September 2008, by section 4 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 3 Purpose

- (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.
- (2) A person who exercises a power or discretion, or carries out a duty, under this Act must exercise that power or discretion, or carry out that duty, in a manner that is consistent with the purpose of this Act.

Section 3(1): substituted, on 26 September 2008, by section 5 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Subsection (1)(a) was amended, as from 14 November 2006, by section 4 Climate Change Response Amendment Act 2006 (2006 No 59) by inserting the word "first" after the words "New Zealand in the".

First section 3(2): inserted, on 26 September 2008, by section 5 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### 4 Interpretation

(1) In this Act, unless the context otherwise requires,—

**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

**assigned amount unit** means a unit issued out of a Party's initial assigned amount and designated as an assigned amount unit by—

- (a) the Registry; or
- (b) an overseas registry of a Party listed in Annex B of the Protocol

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

**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)

**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

**carbon dioxide equivalent**, in relation to a gas in Annex A of the Protocol, means the amount, in tonnes, of carbon dioxide that would produce the same global warming as the amount of that gas, calculated by multiplying the tonnes of that gas by its

global warming potential (as determined under Article 5.3 of the Protocol)

**carry-over** means the transfer of an assigned amount unit, certified emission reduction unit, or emission reduction unit from the relevant commitment period to a subsequent commitment period so that the unit remains capable of being transferred, retired, cancelled, or carried-over in that subsequent commitment period

**CDM registry** means the registry established and maintained as the clean development mechanism registry under Article 12 of the Protocol

**certified emission reduction unit** means a unit derived from a clean development mechanism project, issued by the CDM registry, and designated as a certified emission reduction unit by the CDM registry

**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

**clean development mechanism project** means a project undertaken under Article 12 of the Protocol for the benefit of a Party not listed in Annex I of the Convention

clean development mechanism project: this definition was amended, as from 1 August 2003, by section 5(1)(b) Climate Change Response Amendment Act 2006 (2006 No 59) by omitting the words “that results in certified emission reductions”.

**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

**commitment period** *[Repealed]*

commitment period: this definition was repealed, as from 1 August 2003, by section 5(3) Climate Change Response Amendment Act 2006 (2006 No 59).

*[Repealed]*

**commitment period reserve** means a number of Kyoto units equal to the lesser of—

- (a) 90% of the assigned amount units issued out of New Zealand's initial assigned amount; or
- (b) 5 times 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 the most recent year, as estimated by the most recent inventory of greenhouse gases that has been reported in accordance with Article 7 of the Protocol and reviewed in accordance with Article 8 of the Protocol

**Conference of the Parties** means the Conference of the Parties to the Convention

**Convention** means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992, a copy of the English text of which is set out in Schedule 1

**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

**designated operational entity** means an operational entity designated under Article 12(5) of the Protocol

designated operational entity: this definition was inserted, as from 1 August 2003, by section 5(2) Climate Change Response Amendment Act 2006 (2006 No 59).

**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

**elect**, in relation to a sink activity under Article 3.4 of the Protocol, means that a Party has advised the Secretariat of its intention to report to the Secretariat on that activity for the purpose of compliance with that Party's obligations under Article 3.1 of the Protocol

**emission reduction unit** means a unit derived from a joint implementation project, issued by converting an assigned amount unit or removal unit, and designated as an emission reduction unit by—

- (a) the Registry; or
- (b) an overseas registry of a Party listed in Annex B of the Protocol

**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

**executive board** means the board established under Article 12(4) of the Protocol

executive board: this definition was inserted, as from 1 August 2003, by section 5(2) Climate Change Response Amendment Act 2006 (2006 No 59).

**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

**expire** or **expiry**, in relation to a long-term certified emission reduction unit or a temporary certified emission reduction unit, means a unit that is no longer capable of being—

- (a) transferred to any account other than the general cancellation account; or
- (b) retired

expire or expiry: this definition was inserted, as from 1 August 2003, by section 5(2) Climate Change Response Amendment Act 2006 (2006 No 59).

**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

**first commitment period** means the commitment period from 1 January 2008 to 31 December 2012 (inclusive)

first commitment period: this definition was inserted, as from 1 August 2003, by section 5(3) Climate Change Response Amendment Act 2006 (2006 No 59).

**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

**general cancellation account** means an account in the Registry for the purpose of holding units on behalf of the Crown that are cancelled for any reason other than sink activities being a source of emissions or a determination that New Zealand is not in compliance with Article 3.1 of the Protocol

**greenhouse gas** means a gas listed in Annex A of the Protocol

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

**holding account** means an account in the Registry for the purpose of holding units that have not been retired, surrendered, converted, or cancelled

**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

**indirect greenhouse gas** —

- (a) means a gas that—
- (i) reacts with other gases to form a greenhouse gas; or
  - (ii) changes the chemistry of the atmosphere in a way that increases the lifetime of other greenhouse gases; and
- (b) includes, but is not limited to, carbon monoxide, nitrogen oxides, non-methane volatile organic compounds, and sulphur dioxide

**industrial or trade premises** means any premises used for any industrial or trade purposes, or any premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes; but does not include any production land

**initial assigned amount** means the allowance of emissions of greenhouse gas assigned to a Party listed in Annex B of the Protocol, measured in tonnes of carbon dioxide equivalent, and calculated under Articles 3.7 and 3.8 of the Protocol

**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

**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

**joint implementation project** means a project aimed at reducing the human-induced emissions of greenhouse gases by sources or enhancing the human-induced removals by sink activities of a Party listed in Annex I of the Convention that is undertaken under Article 6 of the Protocol

**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

**local authority** means a local authority within the meaning of the Local Government Act 2002.

local authority: this definition was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

**long-term certified emission reduction replacement account** means an account in the Registry—

- (a) for the purpose of—
  - (i) replacing long-term certified emission reduction units in that account or the retirement account, before they are due to expire, with assigned amount units, certified emission reduction units, emission reduction units, or removal units; or
  - (ii) replacing long-term certified emission reduction units, no more than 30 days before they are due to expire as a result of a reversal of sinks or non-receipt of a certification report, with—
    - (A) assigned amount units, certified emission reduction units, emission reduction units, or removal units; or
    - (B) long-term certified emission reduction units from the same clean development mechanism project; and
- (b) that is limited to the relevant commitment period

long-term certified emission reduction replacement account: this definition was inserted, as from 1 August 2003, by section 5(2) Climate Change Response Amendment Act 2006 (2006 No 59).

**long-term certified emission reduction unit** means a unit derived from a clean development mechanism project, issued by the CDM registry, and designated as a long-term certified emission reduction unit by the CDM registry

**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

**non-compliance cancellation account** means an account in the Registry for the purpose of holding any units on behalf of the Crown that are cancelled as a result of a determination

that New Zealand is not in compliance with Article 3.1 of the Protocol

**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

**ordinary hours of business** means the hours of 8 am to 6 pm from Monday to Friday

**overseas registry** means—

- (a) a registry of a Party listed in Annex B of the Protocol (other than New Zealand);
- (b) the CDM registry
- (c) any other prescribed registry

**participant** means a person who is a participant under section 54

**Party** means a Party to the Protocol

**performance**, in relation to ruminants and other farmed livestock, means the production statistics with respect to those animals, including, but not limited to, weight, milk production, lambing and calving percentage, and wool weight

**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)

**previous commitment period** means a commitment period, including (but not limited to) the first commitment period, that—

- (a) is specified or determined under the Protocol; and
- (b) begins and ends before a subsequent commitment period

previous commitment period: this definition was inserted, as from 1 August 2003, by section 5(2) Climate Change Response Amendment Act 2006 (2006 No 59).

**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

**production land** means any land used for the production of primary products (including agricultural, pastoral, horticultural, and forestry products); but does not include any buildings

**Protocol** means the Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997, a copy of the English text of which is set out in Schedule 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

**Registry** means the Registry established in New Zealand for the purpose set out in section 10

**relevant commitment period** means a commitment period that is specified or determined under the Protocol, and—

- (a) in which a particular activity or transaction occurs; or
- (b) to which an account or Kyoto unit is associated

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

**removal unit** means a unit—

- (a) derived from a Party's sink activities that result in a net removal of greenhouse gases; and
- (b) designated as a removal unit by—
  - (i) the Registry; or

- (ii) an overseas registry of a Party listed in Annex B of the Protocol

**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

**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)

**retirement account** means an account in the Registry for the purpose of holding Kyoto units that the Minister of Finance has retired on behalf of the Crown

**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

**Secretariat** means the Secretariat of the Convention

**sink activity**, in relation to greenhouse gas removals, means—

- (a) an activity under Article 3.3 of the Protocol; or
- (b) an elected activity under Article 3.4 of the Protocol

**sink cancellation account** means an account in the Registry for the purpose of holding units that the Minister of Finance has cancelled on behalf of the Crown as a result of sink activities resulting in a net source of emissions

**subsequent commitment period** means a commitment period that—

- (a) is specified or determined under the Protocol; and
- (b) begins and ends after a previous commitment period

subsequent commitment period: this definition was inserted, as from 1 August 2003, by section 5(2) Climate Change Response Amendment Act 2006 (2006 No 59).

**supervisory committee** means the committee established to supervise the verification of emission reduction units generated by project activities under Article 6 of the Protocol

**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

**temporary certified emission reduction replacement account** means an account in the Registry—

- (a) for the purpose of replacing temporary certified emission reduction units, before they are due to expire, with assigned amount units, certified emission reduction units, emission reduction units, removal units, or temporary certified emission reduction units that are due to expire in a subsequent commitment period; and
- (b) that is limited to the relevant commitment period

temporary certified emission reduction replacement account: this definition was inserted, as from 1 August 2003, by section 5(2) Climate Change Response Amendment Act 2006 (2006 No 59).

**temporary certified emission reduction unit** means a unit derived from a clean development mechanism project issued by the CDM registry, and designated as a temporary certified emission reduction unit by the CDM registry

**unit** means a Kyoto unit, a New Zealand unit, or an approved overseas unit

**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

- (2) Terms and expressions used and not defined in this Act but defined in the Convention or Protocol have, unless the context otherwise requires, the same meaning as in the Convention or Protocol.
- (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.

Section 4(1) **account number**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **allocation plan**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **animal material**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **animal product**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **approved overseas unit**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **assigned amount unit**: amended, on 26 September 2008, by section 6(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **associated person**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **cancel**: substituted, on 26 September 2008, by section 6(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carbon accounting area**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carbon dioxide equivalent**: amended, on 26 September 2008, by section 6(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carry-over**: amended, on 26 September 2008, by section 6(6)(a) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carry-over**: amended, on 26 September 2008, by section 6(6)(b) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

carry over: this definition was amended, as from 1 August 2003, by section 5(1)(a) Climate Change Response Amendment Act 2006 (2006 No 59) by inserting the word “relevant” after the words “unit from the”.

Section 4(1) **certified emission reduction unit**: amended, on 26 September 2008, by section 6(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **chief executive**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **chief executive responsible for the administration of this Act**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **clear**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **coal**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **commitment period reserve**: amended, on 26 September 2008, by section 6(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **commitment period reserve** paragraph (b): amended, on 26 September 2008, by section 6(9) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **conversion account**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **convert**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Crown conservation contract**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Crown land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **dairy processing**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **deforest**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **disposal facility**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **dispose**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **document**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **draft allocation plan**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **emission reduction unit**: amended, on 26 September 2008, by section 6(10) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **emissions**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **emissions return**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **entity**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **exempt land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **exotic forest species**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **export**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **farm dairy**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Food Standards Code**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **forest land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **forest species**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **group**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **holding account**: amended, on 26 September 2008, by section 6(11) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

holding account: this definition was amended, as from 1 August 2003, by section 5(1)(c) Climate Change Response Amendment Act 2006 (2006 No 59) by omitting the words “on behalf of the Crown”.

Section 4(1) **import**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **independent transaction log**: repealed, on 26 September 2008, by section 6(12) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **indigenous forest species**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **initial assigned amount**: amended, on 26 September 2008, by section 6(13) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **international transaction log**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **inventory agency**: substituted, on 26 September 2008, by section 6(14) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Kyoto units**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **landowner**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

long-term certified emission reduction unit: this definition was inserted, as from 1 August 2003, by section 5(2) Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **long-term certified emission reduction unit**: amended, on 26 September 2008, by section 6(15) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Maori land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **merchantable timber**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **mining**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Minister**: substituted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Minister responsible for the administration of this Act**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Minister responsible for the inventory agency**: repealed, on 26 September 2008, by section 6(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Minister responsible for the Registry**: repealed, on 26 September 2008, by section 6(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **natural gas**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **New Zealand unit**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **obligation fuel**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **obligation jet fuel**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **operating**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **overseas registry** paragraph (c): added, on 26 September 2008, by section 6(16) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **participant**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **post-1989 forest land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **pre-1990 forest land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **primary representative**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **public notice**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **recover**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **recycle**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **registered forestry right**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **registered lease**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

relevant commitment period: this definition was inserted, as from 1 August 2003, by section 5(2) Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **relevant commitment period** paragraph (b): amended, on 26 September 2008, by section 6(17) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **removal activity**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **removal unit** paragraph (b): amended, on 26 September 2008, by section 6(18) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **removals**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **representative identifier**: repealed, on 26 September 2008, by section 6(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **retire**: substituted, on 26 September 2008, by section 6(20) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **retirement account**: amended, on 26 September 2008, by section 6(21) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **reuse**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **surrender**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **surrender account**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

temporary certified emission reduction unit: this definition was inserted, as from 1 August 2003, by section 5(2) Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **temporary certified emission reduction unit**: amended, on 26 September 2008, by section 6(22) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **unit**: repealed, on 26 September 2008, by section 6(23) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **units**: inserted, on 26 September 2008, by section 6(23) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **waste**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **year**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(3): added, on 26 September 2008, by section 6(24) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(4): added, on 26 September 2008, by section 6(24) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(5): added, on 26 September 2008, by section 6(24) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

- 5 Act binds the Crown**  
This Act binds the Crown.

## **Part 2**

### **Institutional arrangements**

#### **Subpart 1—Powers of Minister of Finance**

- 6 Minister of Finance may carry out trading activities with respect to units**  
The Minister of Finance may, on behalf of the Crown,—
- (a) direct the Registrar to establish or close holding accounts:
  - (b) direct the Registrar to transfer units to any holding account in the Registry or to an overseas registry:
  - (c) buy or sell units, or otherwise acquire or dispose of units:
  - (d) enter into agreements to buy or sell units, or otherwise acquire or dispose of units, with any person (including any other Party):
  - (e) buy or sell, or enter into any agreement to buy or sell, or otherwise acquire or dispose of, any financial derivatives or other financial instruments relating to units or in connection with transactions relating to units:
  - (f) appoint agents to conduct the activities referred to in paragraphs (a) to (e) on the terms and conditions that the Minister of Finance thinks fit.
- 7 Minister of Finance may give directions to Registrar regarding accounts and units**
- (1) The Minister of Finance may give directions to the Registrar to—
- (a) establish the following accounts in the Registry for the Crown:
    - (i) a sink cancellation account:
    - (ii) a non-compliance cancellation account:
    - (iii) a general cancellation account:

- (iv) a retirement account:
  - (v) a long-term certified emission reduction replacement account:
  - (vi) a temporary certified emission reduction replacement account:
  - (vii) a surrender account:
  - (viii) a conversion account:
  - (b) issue assigned amount units in the Registry:
  - (c) issue removal units or emission reduction units:
  - (d) transfer, subject to any prescribed restriction or prohibition, units (other than long-term certified emission reduction units or temporary certified emission reduction units) from holding accounts to the general cancellation account, the long-term certified emission reduction replacement account, the non-compliance cancellation account, the retirement account, the surrender account, the conversion account, the temporary certified emission reduction replacement account, or the sink cancellation account:
  - (da) transfer long-term certified emission reduction units or temporary certified emission reduction units from holding accounts to the general cancellation account, the long-term certified emission reduction replacement account, the temporary certified emission reduction replacement account, or the retirement account:
  - (e) carry-over assigned amount units, certified emission reduction units, and emission reduction units held in holding accounts:
- (2) Despite subsection (1), or any regulations made under this Act, the Minister of Finance may not give a direction to transfer units from an account held by an account holder other than the Crown to another account in the Registry, unless—
- (a) the Minister of Finance has the written consent of the account holder; or
  - (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.
- (3) For the purposes of subsection (2)(b)(i), **reasonable notice** means sufficient opportunity in the circumstances for the relevant account holder to make a written submission to the Minister of Finance on the transfer of the units before the units are transferred.

Section 7(1)(a)(v): added, on 19 November 2007, by section 6(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(a)(vi): added, on 19 November 2007, by section 6(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(a)(vii): added, on 26 September 2008, by section 7(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(1)(a)(viii): added, on 26 September 2008, by section 7(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(1)(b): substituted, on 19 November 2007, by section 6(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(d): substituted, on 19 November 2007, by section 6(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(d): amended, on 26 September 2008, by section 7(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(1)(d): amended, on 26 September 2008, by section 7(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(1)(da): inserted, on 19 November 2007, by section 6(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(e): substituted, on 19 November 2007, by section 6(4) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(1)(e): amended, on 26 September 2008, by section 7(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(2): added, on 19 November 2007, by section 6(5) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(2)(b): substituted, on 26 September 2008, by section 7(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(2)(c): added, on 26 September 2008, by section 7(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(3): added, on 19 November 2007, by section 6(5) of the Climate Change Response Amendment Act 2006 (2006 No 59).

## **8 Registrar must give effect to directions of Minister of Finance**

The Registrar must give effect to any directions given by the Minister of Finance under section 6 or section 7 in accordance with, and subject to, the procedures set out in subpart 2 of this Part and regulations made under section 30G.

Section 8: amended, on 26 September 2008, by section 8 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **8A Minister of Finance must publish directions**

As soon as practicable after giving a direction under section 6 or 7, the Minister of Finance must publish a copy of the direction on the Registry's Internet site.

Section 8A: inserted, on 19 November 2007, by section 7 of the Climate Change Response Amendment Act 2006 (2006 No 59).

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

For the purposes of managing the Crown's holding of units and discharging New Zealand's obligations under section 32(1)(b), the Minister of Finance may, as and when he or she thinks fit,—

- (a) direct the inventory agency to provide information estimating New Zealand's human-induced emissions of greenhouse gases by sources and removals by sink activities:
- (b) direct the Registrar to provide information on those units, including, but not limited to, information indicating—
  - (i) how many units the Crown holds; and
  - (ii) how many units the Crown has issued or acquired, transferred, retired, replaced, cancelled, and carried-over.

Section 9: amended, on 19 November 2007, by section 8(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 9(b)(ii): amended, on 26 September 2008, by section 9 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 9(b)(ii): amended, on 19 November 2007, by section 8(2)(a) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 9(b)(ii): amended, on 19 November 2007, by section 8(2)(b) of the Climate Change Response Amendment Act 2006 (2006 No 59).

## Subpart 2—Registry

### *Purpose of Registry*

#### **10 Purpose of Registry**

- (1) The purpose of the Registry in relation to Kyoto units is to—
  - (a) ensure, for the first commitment period or a subsequent commitment period, the accurate, transparent, and efficient accounting of—
    - (i) the issue, holding, transfer, retirement, surrender, and cancellation of Kyoto units; and
    - (ii) the carry-over of assigned amount units, certified emission reduction units, and emission reduction units; and
    - (iii) the replacement of expired long-term certified emission reduction units and expired temporary certified emission reduction units; and
  - (b) ensure, in accordance with Article 7.4 of the Protocol, the accurate, transparent, and efficient exchange of information between—
    - (i) the Registry and overseas registries; and
    - (ii) the Registry and the international transaction log.
  - (c) *[Repealed]*
- (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.

Section 10: amended, on 26 September 2008, by section 10(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(1)(a): amended, on 26 September 2008, by section 10(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(a): amended, on 19 November 2007, by section 9(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 10(1)(a)(i): amended, on 26 September 2008, by section 10(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(1)(a)(i): amended, on 26 September 2008, by section 10(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(a)(i): amended, on 19 November 2007, by section 9(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 10(a)(iii): added, on 19 November 2007, by section 9(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 10(1)(b)(ii): amended, on 26 September 2008, by section 10(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(1)(b)(ii): amended, on 26 September 2008, by section 10(6) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(1)(c): repealed, on 26 September 2008, by section 10(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(2): added, on 26 September 2008, by section 10(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 10(3): added, on 26 September 2008, by section 10(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### *Registrar*

#### **11 Appointment of Registrar**

The chief executive must appoint a Registrar in accordance with the State Sector Act 1988.

Section 11: amended, on 26 September 2008, by section 11 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **12 Registrar responsible for Registry**

The Registrar is responsible for the operation of the Registry.

**13 Registrar may refuse access to, or suspend operation of, Registry**

The Registrar may refuse access to the Registry, or otherwise suspend the operation of the Registry (in whole or in part),—

- (a) for maintenance; or
- (b) in response to technical difficulties; or
- (c) to ensure the security or integrity of the Registry; or
- (d) to give effect to New Zealand's international obligations.

Section 13: substituted, on 19 November 2007, by section 10 of the Climate Change Response Amendment Act 2006 (2006 No 59).

**14 Registrar must give effect to directions**

*[Repealed]*

Section 14: repealed, on 26 September 2008, by section 12 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**15 Registrar to allocate unique numbers**

(1) The Registrar must, in accordance with regulations made under this Act,—

- (a) allocate a unique account number to each account when the account is created; and
- (b) allocate a unique serial number to—
  - (i) each assigned amount unit when the Registrar records the initial assigned amount; and
  - (ii) each removal unit when the Registrar issues the removal unit.

(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.

(2) If the Minister of Finance directs the Registrar to issue emission reduction units under section 7, the Registrar must convert the assigned amount units or removal units specified by the Minister of Finance into emission reduction units by—

- (a) giving the emission reduction units the serial numbers of the units from which the emission reduction units are being converted; and
- (b) replacing the identifiers on the converted units with identifiers that designate that the converted units are emission reduction units.

Section 15 heading: amended, on 26 September 2008, by section 13(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 15(1A): inserted, on 26 September 2008, by section 13(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **16 Carry-over of certain Kyoto units**

- (1) An account holder may, subject to regulations made under this Act, apply to the Registrar to carry-over assigned amount units, certified emission reduction units, or emission reduction units held in that account holder's holding account.
- (2) Long-term certified emission reduction units, removal units, and temporary certified emission reduction units may not be carried-over.

Section 16: substituted, on 19 November 2007, by section 12 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 16 heading: amended, on 26 September 2008, by section 14(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 16(1): amended, on 26 September 2008, by section 14(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 16(2): amended, on 26 September 2008, by section 14(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **17 Commitment period reserve**

- (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) This section does not apply to transfers or cancellations of Kyoto units that the Registrar has issued as emission reduction units that were verified by the supervisory committee.

Section 17(1): substituted, on 26 September 2008, by section 15(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 17(2): amended, on 26 September 2008, by section 15(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### *Unit register*

## **18 Form and content of unit register**

- (1) The Registry must have a unit register that is—
  - (a) in electronic form; and
  - (b) accessible via the Registry's Internet site; and
  - (c) operated at all times, unless the Registrar suspends its operation (in whole or in part) under section 13 or as prescribed in regulations.
- (2) The unit register must contain—
  - (a) a record of the holdings of units in holding accounts in New Zealand; and
  - (b) the particulars of transactions, including, but not limited to,—
    - (i) the issue, transfer, retirement, surrender, conversion, and cancellation of units; and
    - (ii) the carry-over of assigned amount units, certified emission reduction units, and emission reduction units; and
    - (iii) the replacement of long-term certified emission reduction units and temporary certified emission reduction units; and
  - (c) any other matters that are required to be registered under this Act or regulations made under this Act.
- (3) A unit recorded in the unit register is—
  - (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
  - (b) transferable, subject to any regulations made under this Act,—
    - (i) within the unit register; or
    - (ii) between the unit register and overseas registries.

Section 18(1)(b): amended, on 19 November 2007, by section 13(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18(2)(b)(i): amended, on 26 September 2008, by section 16(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18(2)(b)(i): amended, on 19 November 2007, by section 13(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18(2)(b)(iii): added, on 19 November 2007, by section 13(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18(3): added, on 19 November 2007, by section 13(4) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18(3)(a): substituted, on 26 September 2008, by section 16(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **18A Opening holding accounts**

- (1) Any person may submit an application to the Registrar to open 1 or more holding accounts in the unit register by using the form and paying the fees (if any) prescribed in regulations made under this Act.
- (2) The Registrar may approve the opening of a holding account subject to any regulations made under this Act.
- (3) If the Registrar approves an application to open a holding account, the Registrar must, as soon as practicable,—
  - (a) open a holding account in the applicant's name; and
  - (b) provide the applicant with an account number.
- (4) If the application is incomplete, the Registrar must, as soon as practicable, ask the applicant to provide the information or fee (if any) that is required to make the application complete.
- (5) The Registrar may refuse to provide a holding account to any applicant who provides an incomplete application.
- (6) A holding account is subject to any regulations made under this Act.

Section 18A: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18A(3)(b): amended, on 26 September 2008, by section 17 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **18B Closing holding accounts**

- (1) An account holder may submit a request to the Registrar to close 1 or more of that account holder's holding accounts in the unit register by using the form and paying the fee (if any) prescribed in regulations made under this Act.
- (2) The chief executive may give a direction to the Registrar to close an account holder's holding account—
  - (a) if the chief executive has the written consent of the account holder; or
  - (b) where written consent is not given,—
    - (i) if the chief executive has given the account holder reasonable notice; and
    - (ii) if—
      - (A) the closure is required to comply with New Zealand's obligations under the Protocol; or
      - (B) the account holder has failed to comply with this Part or any regulations made regarding the matters specified in section 30G; or
      - (C) the chief executive is satisfied that the account holder no longer requires the account.
- (3) If there are any units remaining in a holding account when it is closed,—
  - (a) the units are forfeited to the Crown; and
  - (b) the Registrar must, as soon as practicable, transfer the units to a Crown holding account.
- (4) If a request is incomplete, the Registrar must, as soon as practicable, ask the account holder to provide the information or fee (if any) that is required to make the request complete.
- (5) The Registrar may not close a holding account if the account holder provides an incomplete request.
- (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.

Section 18B: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18B(2): amended, on 26 September 2008, by section 18(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(2)(a): amended, on 26 September 2008, by section 18(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(2)(b)(i): amended, on 26 September 2008, by section 18(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(2)(b)(ii)(B): amended, on 26 September 2008, by section 18(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(2)(b)(ii)(B): amended, on 26 September 2008, by section 18(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(2)(b)(ii)(C): amended, on 26 September 2008, by section 18(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(6): substituted, on 26 September 2008, by section 18(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **18C Transfer of units**

- (1) An account holder may, by using the form and paying the fees (if any) prescribed in regulations made under this Act, apply to the Registrar to transfer units from that account holder's holding account to another account in—
  - (a) the unit register; or
  - (b) an overseas registry.
- (2) The Registrar must transfer the specified units as requested, subject to any regulations made under this Act.

- (3) Despite subsection (2), if the Registrar is asked to transfer Kyoto units held in an account holder's holding account to a retirement account, the Registrar must—
- (a) seek a direction from the Minister of Finance as to whether the units may be transferred to a retirement account; and
  - (b) transfer the units to a retirement account if the Minister of Finance so directs.
- (4) An account holder who receives units is under no obligation to initiate any registration process.

Section 18C: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18C(3): amended, on 26 September 2008, by section 19(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18C(3): amended, on 26 September 2008, by section 19(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18C(3)(a): amended, on 26 September 2008, by section 19(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18C(3)(b): amended, on 26 September 2008, by section 19(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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).

Section 18CA: inserted, on 26 September 2008, by section 20 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 18CB: inserted, on 26 September 2008, by section 20 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 18CC: inserted, on 26 September 2008, by section 20 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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).

Section 18CD: inserted, on 26 September 2008, by section 20 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**18D Succession**

- (1) This section applies if an account holder—
  - (a) is a natural person and dies; or
  - (b) is not a natural person and is wound up, liquidated, dissolved, or otherwise ceases to exist.

- (2) If this section applies, the person listed on the holding account as the account holder's representative may operate the holding account until—
  - (a) a successor is determined; and
  - (b) the Registrar is informed of that determination in writing.
- (3) If a successor is determined, and the Registrar is informed of that determination in writing, the Registrar must register the successor as the account holder.

Section 18D: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### **18E Trusts, representatives, and assignees of bankrupts**

- (1) Notice of a trust, whether expressed, implied, or constructive, may not be entered on the unit register.
- (2) Despite anything in section 18D, the existence of a representative that may operate the holding account of an account holder who has died, or that has been wound up, liquidated, or dissolved, or otherwise has ceased to exist, does not constitute notice of a trust.
- (3) The assignee of the property of a bankrupt may be entered on the unit register as the assignee of the bankrupt's units.

Section 18E: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### **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.

Section 19: substituted, on 26 September 2008, by section 21 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **20 Transactions must be registered**

- (1) A transaction to issue, transfer, cancel, retire, surrender, convert, or replace units must be registered on the unit register.
- (2) However, the Registrar may not register a transaction on the unit register if—
  - (a) the Registrar receives a notification from the international transaction log that there is a discrepancy with the transaction; or
  - (b) the transaction is not submitted in the prescribed form; or
  - (c) the prescribed fees (if any) have not been paid to the Registrar (unless arrangements for payment have been made in accordance with regulations made under this Act).

Section 20(1): amended, on 26 September 2008, by section 22(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 20(1): amended, on 19 November 2007, by section 15(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 20(2): substituted, on 19 November 2007, by section 15(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 20(2)(a): amended, on 26 September 2008, by section 22(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **21 Registration procedure for Kyoto units**

- (1) On receipt of a direction in relation to Kyoto units given by the Minister of Finance, or an application for the registration of a transaction in relation to Kyoto units by an account holder that 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 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.
- (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.
- (3) If the Registrar receives a notification from the international transaction log that there is a discrepancy in a transaction in relation to Kyoto units, the Registrar—
  - (a) may not register the transaction; and
  - (b) must terminate the transaction; and
  - (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.
- (4) This section does not apply to the carry-over of assigned amount units, certified emission reduction units, and emission reduction units.

Section 21 heading: amended, on 26 September 2008, by section 23(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(1): substituted, on 19 November 2007, by section 16(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 21(1): amended, on 26 September 2008, by section 23(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(1): amended, on 26 September 2008, by section 23(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(1)(b): substituted, on 26 September 2008, by section 23(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(1)(c): added, on 26 September 2008, by section 23(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(2): substituted, on 26 September 2008, by section 23(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(2): substituted, on 19 November 2007, by section 16(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 21(3): amended, on 26 September 2008, by section 23(6) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(3): amended, on 26 September 2008, by section 23(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(3)(c): substituted, on 26 September 2008, by section 23(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(3)(c)(ii): repealed, on 19 November 2007, by section 16(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 21(3)(c)(iii): substituted, on 19 November 2007, by section 16(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 21(3)(d): added, on 26 September 2008, by section 23(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21(4): amended, on 26 September 2008, by section 23(9) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 21AA: inserted, on 26 September 2008, by section 24 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **21A Electronic registration**

A direction by the Minister of Finance or an application by an account holder to register a transaction must be—

- (a) made electronically in the prescribed form via the Registry's Internet site, and contain the particulars specified in the form; and
- (b) accompanied by the fee (if any) prescribed in regulations made under this Act; and
- (c) made in accordance with regulations made under this Act.

Section 21A: inserted, on 19 November 2007, by section 17 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### **21B Defective applications**

- (1) If an application is defective, the Registrar may—

- (a) *[Repealed]*
  - (b) direct, in writing by electronic notification, the applicant to correct the defect within a specified period of time.
- (2) If a direction to correct a defect is not complied with within the specified period of time, the Registrar may refuse to—
- (a) proceed with the registration; or
  - (b) register the transaction.
- (3) Any fees paid to the Registrar in relation to an uncorrected defective application are forfeited.

Section 21B: inserted, on 19 November 2007, by section 17 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 21B(1)(a): repealed, on 26 September 2008, by section 25 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **22 Transactions take effect when registered**

- (1) A transaction takes effect when it is registered.
- (2) A transaction is registered when the Registrar—
- (a) assigns a registration number, date, and time, and other information that may be required by this Act, to the transaction; and
  - (b) enters those particulars in the unit register.

## **23 Receiving Kyoto units from overseas registries**

- (1) If the Registrar receives notification from an overseas registry of a proposal to transfer Kyoto units to an account in the Registry, the Registrar must register the transaction, in accordance with the notification, when the Registrar receives the following:
- (a) notification from the international transaction log that the proposed transaction does not contain any discrepancies; and
  - (b) *[Repealed]*
- (2) If the Registrar receives notification from an overseas registry of a proposal to transfer Kyoto units to an account in the Registry and receives notification from the international transaction log that there is a discrepancy, the Registrar—
- (a) may not register the transaction; and

- (b) must terminate the transaction; and
  - (c) must notify the international transaction log of the termination.
- (3) A transfer of Kyoto units from an overseas registry is subject to any regulations made under this Act.

Section 23 heading: amended, on 26 September 2008, by section 26(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(1): amended, on 26 September 2008, by section 26(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(1)(a): amended, on 26 September 2008, by section 26(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(1)(b): repealed, on 19 November 2007, by section 18(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 23(2): amended, on 26 September 2008, by section 26(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(2): amended, on 26 September 2008, by section 26(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(2)(c): amended, on 26 September 2008, by section 26(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23(2)(c): amended, on 19 November 2007, by section 18(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 23(3): added, on 19 November 2007, by section 18(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 23(3): amended, on 26 September 2008, by section 26(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 23A: inserted, on 26 September 2008, by section 27 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **24 Priority of registration**

- (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) A direction or an application is received by the Registrar when it is recorded as being downloaded into the computer maintained to operate the unit register.
- (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.

Section 24(1): substituted, on 26 September 2008, by section 28(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 24(1): amended, on 19 November 2007, by section 19(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 24(2): amended, on 19 November 2007, by section 19(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 24(3): added, on 26 September 2008, by section 28(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **25 Correction of unit register**

- (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) The request—
  - (a) may be made at any time; and
  - (b) must specify—
    - (i) the inaccuracy; and
    - (ii) the correction required; and
  - (c) must be in the form, and accompanied by the fees (if any), prescribed in regulations made under this Act.
- (3) If the Registrar is satisfied that the unit register is inaccurate in any respect, the Registrar may—
  - (a) correct the unit register accordingly; and
  - (b) record on the unit register—
    - (i) the nature of the correction; and
    - (ii) the time that the correction was made; and
  - (c) give notification of the correction, as soon as practicable, to—
    - (i) any person whom the Registrar considers to be affected by the correction; and
    - (ii) the international transaction log (if required to do so); and
    - (iii) an overseas registry (if required to do so).

Section 25: substituted, on 19 November 2007, by section 20 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 25(1): substituted, on 26 September 2008, by section 29(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 25(3): amended, on 26 September 2008, by section 29(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 25(3)(c)(ii): substituted, on 26 September 2008, by section 29(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 25(3)(c)(iii): substituted, on 26 September 2008, by section 29(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **26 Unit register must be open for search**

- (1) Except as provided in section 13, the unit register must be open at all times for searches by a person via the Registry's Internet site.

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

Section 26: amended, on 19 November 2007, by section 21 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 26(2): added, on 26 September 2008, by section 30 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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).

Section 27: substituted, on 26 September 2008, by section 31 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 27: amended, on 19 November 2007, by section 22(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 27(a)(iii): substituted, on 19 November 2007, by section 22(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 27(b): amended, on 19 November 2007, by section 22(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 27(b)(iv): amended, on 19 November 2007, by section 22(4) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 27(b)(xia): inserted, on 19 November 2007, by section 22(5) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 27(b)(xib): inserted, on 19 November 2007, by section 22(5) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 27(b)(xic): inserted, on 19 November 2007, by section 22(5) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 27(b)(xii): repealed, on 19 November 2007, by section 22(6) of the Climate Change Response Amendment Act 2006 (2006 No 59).

## **28 Search of unit register**

A person may, by using the form and paying the fees (if any) prescribed by regulations made under this Act, search the unit register, and obtain a printed search result, in accordance with this Act and any regulations made under this Act.

Sections 28 and 29 were substituted, as from 14 November 2006, by section 23 Climate Change Response Amendment Act 2006 (2006 No 59).

## **29 Printed search result receivable as evidence**

A printed search result, or a copy of a printed search result, that purports to be issued by the Registrar is receivable as evidence and is, in the absence of evidence to the contrary, proof of any

matter recorded in the unit register, including (but not limited to)—

- (a) the ownership of units; and
- (b) the date and time of the registration of a transaction; and
- (c) information that the Registry holds.

Sections 28 and 29 were substituted, as from 14 November 2006, by section 23 Climate Change Response Amendment Act 2006 (2006 No 59).

### **30 Recovery of fees**

- (1) A fee that is not paid in accordance with regulations made under this Part may be recovered from the person liable to pay the fees 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 that are payable.

Section 30(1): amended, on 26 September 2008, by section 32(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30(1): amended, on 26 September 2008, by section 32(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30(2): amended, on 26 September 2008, by section 32(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **30A The Crown or Registrar not liable in relation to searches in certain cases**

No action may be brought against the Crown or the Registrar for any loss or damage resulting from—

- (a) an inaccuracy in a search of the unit register; or
- (b) an inaccurate entry or omission in the unit register if the inaccuracy or omission arises from reasonable reliance on information received by the Registrar from—
  - (i) the international transaction log; or
  - (ia) an overseas registry; or
  - (ib) a third party; or
  - (ii) an account holder.

Sections 30A to 30D were inserted, as from 14 November 2006, by section 24 Climate Change Response Amendment Act 2006 (2006 No 59).

Section 30A heading: amended, on 26 September 2008, by section 33(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30A(b)(i): amended, on 26 September 2008, by section 33(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30A(b)(ia): inserted, on 26 September 2008, by section 33(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30A(b)(ib): inserted, on 26 September 2008, by section 33(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Expiry of long-term certified emission reduction  
units and temporary certified emission reduction  
units*

This heading was inserted, as from 14 November 2006, by section 24 Climate Change Response Amendment Act 2006 (2006 No 59).

**30B Expiry of long-term certified emission reduction units**

- (1) A long-term certified emission reduction unit expires at the end of the last crediting period for the clean development mechanism project to which it relates.
- (2) A person who holds a long-term certified emission reduction unit in a retirement account or a long-term certified emission reduction replacement account must replace that unit before it expires by transferring 1 of the following units to the long-term certified emission reduction replacement account:
  - (a) an assigned amount unit; or
  - (b) a certified emission reduction unit; or
  - (c) an emission reduction unit; or
  - (d) a removal unit.
- (3) Thirty days before a long-term certified emission reduction unit in a retirement account or a long-term certified emission reduction replacement account expires, the Registrar must notify in writing the person who holds that unit that it is due to expire and must be replaced.
- (4) If a long-term certified emission reduction unit is not held in a retirement account or a long-term certified emission reduction replacement account, the Registrar must transfer that unit to the general cancellation account when that unit expires.

- (5) If subsection (4) applies, then section 18C(3) does not apply.

Sections 30A to 30D were inserted, as from 14 November 2006, by section 24 Climate Change Response Amendment Act 2006 (2006 No 59).

**30C Replacement of certain long-term certified emission reduction units**

- (1) A person who holds a long-term certified emission reduction unit must replace that unit in accordance with this section if the designated operating entity of the relevant clean development mechanism project—
- (a) provides a certification report that indicates a reversal of net anthropogenic greenhouse gas removals by sinks since the previous certification; or
  - (b) does not provide a certification report.
- (2) If subsection (1) applies,—
- (a) each identified long-term certified emission reduction unit, as notified by the executive board, must be replaced by 1 of the following units:
    - (i) assigned amount units; or
    - (ii) certified emission reduction units; or
    - (iii) emission reduction units; or
    - (iv) removal units; or
    - (v) long-term certified emission reduction units from the same clean development mechanism project; and
  - (b) the Registrar must notify in writing the person who holds the affected long-term certified emission reduction unit.
- (3) A person notified under subsection (2)(b) must replace the affected long-term certified emission reduction unit within 30 days of receiving the notice.
- (4) Sections 354 to 361 of the Property Law Act 2007 apply, with all necessary modifications, to any notice required under subsection (2)(b).

Sections 30A to 30D were inserted, as from 14 November 2006, by section 24 Climate Change Response Amendment Act 2006 (2006 No 59).

Section 30C(4): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

**30D Expiry of temporary certified emission reduction units**

- (1) A temporary certified emission reduction unit expires at the end of the subsequent commitment period that immediately follows the relevant commitment period.
- (2) A person who holds a temporary certified emission reduction unit in a retirement account or a temporary certified emission reduction replacement account must replace that unit before it expires by transferring 1 of the following units to the temporary certified emission reduction replacement account:
  - (a) an assigned amount unit; or
  - (b) a certified emission reduction unit; or
  - (c) an emission reduction unit; or
  - (d) a removal unit; or
  - (e) a temporary certified emission reduction unit that is due to expire in a subsequent commitment period.
- (3) Thirty days before a temporary certified emission reduction unit in a retirement account or a temporary certified emission reduction replacement account expires, the Registrar must notify in writing the person who holds that unit that it is due to expire and must be replaced.
- (4) If a temporary certified emission reduction unit is not held in a retirement account or a temporary certified emission reduction replacement account, the Registrar must transfer that unit to the general cancellation account when that unit expires.
- (5) If subsection (4) applies, then section 18C(3) does not apply.

Sections 30A to 30D were inserted, as from 14 November 2006, by section 24 Climate Change Response Amendment Act 2006 (2006 No 59).

*Miscellaneous provisions*

Heading: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 30E: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 30F: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 30G: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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).

Section 30H: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 30I: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 30J: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 30K: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### Subpart 3—Inventory agency

*[Repealed]*

Subpart 3 heading: repealed, on 26 September 2008, by section 35 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## Part 3

### Inventory agency

Part 3 heading: inserted, on 26 September 2008, by section 35 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### 31 Meaning of greenhouse gas

For the purposes of this subpart, despite anything in section 4, **greenhouse gas** means a gas in the earth's atmosphere that strongly absorbs and re-emits infrared radiation, and includes indirect greenhouse gases, but does not include a gas that is covered by the Montreal Protocol on Substances that Deplete the Ozone Layer.

#### 32 Primary functions of inventory agency

- (1) The primary functions of the inventory agency are to—
- (a) estimate annually New Zealand's human-induced emissions by sources and removals by sinks of greenhouse gases; and
  - (b) prepare the following reports for the purpose of discharging New Zealand's obligations:
    - (i) New Zealand's annual inventory report under Article 7.1 of the Protocol, including (but not limited to) the quantities of long-term certified emission reduction units and temporary certified emission reduction units that have expired or have been replaced, retired, or cancelled; and

- (ii) New Zealand's national communication (or periodic report) under Article 7.2 of the Protocol and Article 12 of the Convention; and
  - (iii) New Zealand's report for the calculation of its initial assigned amount under Article 7.4 of the Protocol, including its method of calculation.
- (2) In carrying out its functions, the inventory agency must—
  - (a) identify source categories; and
  - (b) collect data by means of—
    - (i) voluntary collection; and
    - (ii) collection from government agencies and other agencies that hold relevant information; and
    - (iii) collection in accordance with regulations made under this Part (if any); and
  - (c) estimate the emissions and removals by sinks for each source category; and
  - (d) undertake assessments on uncertainties; and
  - (e) undertake procedures to verify the data; and
  - (f) retain information and documents to show how the estimates were determined.

Subsection (1)(b)(i) was amended, as from 14 November 2006, by section 25 Climate Change Response Amendment Act 2006 (2006 No 59) by adding the words “, including (but not limited to) the quantities of long-term certified emission reduction units and temporary certified emission reduction units that have expired or have been replaced, retired, or cancelled”.

Section 32(2)(b)(iii): amended, on 26 September 2008, by section 36 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **33 Inventory agency under direction of Minister**

- (1) The inventory agency must comply with any direction from the Minister in relation to the performance of its functions under this Part.
- (2) As soon as practicable after giving the direction, the Minister must make a copy of the direction accessible via the inventory agency's Internet site.

Section 33 heading: amended, on 26 September 2008, by section 37(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(1): amended, on 26 September 2008, by section 37(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(1): amended, on 26 September 2008, by section 37(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(2): amended, on 26 September 2008, by section 37(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Subsection (2) was amended, as from 14 November 2006, by section 26 Climate Change Response Amendment Act 2006 (2006 No 59) by substituting the words “make a copy of the direction accessible via the inventory agency’s Internet site” for the words “publish a copy of the direction in the *Gazette*”.

### **34 Record keeping**

The inventory agency must keep a record of changes that occur from year to year in—

- (a) the collection of data; and
- (b) the use of methodologies and emission factors.

### **35 Publication**

The inventory agency must publish New Zealand’s annual inventory report and its national communication (or periodic report) in electronic form by placing the report on a publicly accessible portion of the inventory agency’s Internet site.

Section 35 was substituted, as from 1 August 2003, by section 27 Climate Change Response Amendment Act 2006 (2006 No 59).

### *Inspectors*

Heading: substituted, on 26 September 2008, by section 38 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **36 Authorisation of inspectors**

- (1) The Minister may authorise the following persons, provided that they are suitably qualified and trained, to exercise any or all of the powers of, and carry out any or all of the duties of an inspector under this Part:
  - (a) employees of the inventory agency; or
  - (b) employees of the Ministry of Agriculture and Forestry and employees of any other department of the public service prescribed by regulation; or
  - (c) employees of New Zealand Forest Research Institute Limited, Landcare Research New Zealand Limited, New Zealand Pastoral Agriculture Research Institute Limited, and employees of any other Crown Research

Institute (within the meaning of the Crown Research Institutes Act 1992) prescribed by regulation.

- (2) An authorisation is subject to the terms and conditions that are agreed to by the Minister and the chief executive of the agency that employs the person authorised to be an inspector.
- (3) The Minister must supply an inspector with a warrant of authorisation that clearly states the powers and duties of that inspector.
- (4) An inspector who exercises, or purports to exercise, a power conferred on that inspector under this Part must carry and be able to produce, if required to do so,—
  - (a) his or her warrant of authorisation; and
  - (b) evidence of his or her identity.
- (5) An inspector who holds a warrant of authorisation issued under this section must, on the termination of that inspector's authorisation, surrender his or her warrant of authorisation to the Minister.

Section 36(1): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(1): amended, on 26 September 2008, by section 39(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(2): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(3): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(4): amended, on 26 September 2008, by section 39(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(5): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **37 Power to enter land or premises to collect information to estimate emissions or removals of greenhouse gases**

- (1) For the purposes of collecting information to assist with the estimation of New Zealand's human-induced emissions by sources and removals by sinks of greenhouse gases, an inspector may, if authorised in writing by the Minister, enter or re-enter land, or premises where any livestock are likely to be held, excluding any dwellinghouse, at any reasonable time during the ordinary hours of business, to—

- (a) carry out surveys, investigations, tests, or measurements (including those that involve leaving measuring equipment on the land or premises):
  - (b) take samples of water, air, soil, or organic matter.
- (2) To avoid doubt, the authorisation given by the Minister may be for a series of surveys, investigations, tests, measurements, or samples.
- (3) Reasonable notice, in writing, must be given to the occupier (if any) of the land or premises to be entered that specifies—
  - (a) when, and by what means, entry is to be made; and
  - (b) the purpose for which entry is required; and
  - (c) that the entry is authorised under this section.
- (4) Reasonable effort must be made to give notice under subsection (3) to the owner or owners of the land or premises.
- (5) If the owner or owners are not given notice, reasonable effort must be made to identify any wahi tapu areas and archaeological sites on the land by other means.
- (6) An inspector who exercises the power of entry under this section may use any assistance that is reasonably necessary to exercise the power.
- (7) A person who provides assistance under subsection (6) may exercise the powers provided to inspectors under subsection (1).

Section 37(1): amended, on 26 September 2008, by section 40 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 37(2): amended, on 26 September 2008, by section 40 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **38 Limitation on power of entry under section 37**

The Minister may only authorise an inspector to exercise the power of entry under section 37 if satisfied that the information sought—

- (a) requires specific technical expertise to collect; and
- (b) cannot reasonably be obtained from the occupier or owner of the land or premises.

Section 38: amended, on 26 September 2008, by section 41 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**39 Power of entry for inspection**

- (1) An inspector authorised in writing by the inventory agency may enter land or premises (excluding any dwellinghouse) at any reasonable time during the ordinary hours of business, for the purpose of inspection, to determine whether or not a person is complying with regulations made under section 50(2)(a), (c), (e), or (f).
- (2) During an inspection, an inspector may—
  - (a) require the production of, inspect, and copy any documents or business records (including electronic documents or records):
  - (b) take samples of water, air, soil, or organic matter:
  - (c) carry out surveys, investigations, tests, or measurements (including those that involve leaving measuring equipment on the land or premises):
  - (d) demand from the occupier any other information that the inspector may reasonably require for the purpose of determining whether or not regulations made under section 50(2)(a), (c), (e), or (f) have been complied with.
- (3) An inspector who exercises the power of inspection under this section must give the occupier or owner reasonable notice of the inspector'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 inspector who exercises the power of inspection under this section may be accompanied by any person or persons reasonably necessary to assist him or her with the inspection.
- (6) A person who provides assistance under subsection (5) may exercise the powers provided to inspectors under subsection (2)(a) to (c).
- (7) Nothing in this section limits the privilege against self-incrimination.

**40 Applications for warrants**

- (1) A District Court Judge who, on written application made on oath by an inspector authorised by the inventory agency, is satisfied that there are reasonable grounds to believe that there are in or on or under or over any land, premises, or dwellinghouse any documents or other records or things (including samples) for which there are reasonable grounds to believe may be evidence of the commission of an offence under section 46 may issue a warrant authorising the entry and search of that land, premises, or dwellinghouse.
- (2) Every search warrant must authorise the inspector executing the warrant to—
  - (a) enter and search the land, premises, or dwellinghouse within 30 working days of the date of the warrant at any time that is reasonable in the circumstances during the ordinary hours of business; and
  - (b) require the production, inspection, and copying of documents or business records (including electronic documents or records); and
  - (c) demand from the occupier any other information that the inspector may reasonably require for the purpose of determining whether or not the regulations made under section 50(2) have been complied with; and
  - (d) seize any documents or business records that the inspector has reasonable cause to suspect may be evidence of the commission of an offence under section 46; and
  - (e) take samples of water, air, soil, or organic matter; and
  - (f) use any assistance that is reasonably necessary in the circumstances; and
  - (g) use any force to enter (whether by breaking doors or otherwise) that is reasonable in the circumstances.
- (3) An inspector may not enter a dwellinghouse unless that inspector is accompanied by a member of the police.
- (4) A person who provides assistance under subsection (2)(f) may exercise the powers provided to inspectors under subsection (2)(a), (b), (d), (e), and (g).
- (5) Nothing in this section limits the privilege against self-incrimination.

**41 Entry of defence areas**

Despite anything in sections 37, 39, and 40, an inspector may not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990), except in accordance with a written agreement between the inventory agency and the Chief of Defence Force on the date or dates specified in that agreement.

**42 Proof of authority must be produced**

If powers are exercised under section 37 or section 39 or section 40, an inspector must, on initial entry, and if asked by the occupier at any time afterward, produce for inspection that inspector's—

- (a) warrant of authorisation and evidence of his or her identity; and
- (b) written authorisation to enter required under section 37 or section 39 or a search warrant required under section 40.

**43 Notice of entry**

(1) If, when powers are exercised under section 37 or section 39 or section 40, the occupier is not present at the time that the written authorisation or search warrant is executed, and notice is not given to the owner or owners under section 37 or section 39, the inspector must, in a prominent place, attach a written notice that shows—

- (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 that inspector; and
- (d) an address at which enquiries may be made.

(2) If the inspector removes, or has removed, any documents or business records from any land, premises, or dwellinghouse, the inspector must hand to the occupier, or attach in a prominent place, a notice that—

- (a) lists all of the items taken; and
- (b) states where those items are being held (and, if they are being held in 2 or more places, state which items are being held in which place); and
- (c) states the procedure that the person must follow to have those items returned.

**44 Information obtained under section 39 or section 40 only admissible in proceedings for alleged breach of regulations made under section 50(2)**

No document, business record, or other information obtained from a person under section 39 or section 40 is admissible against that person in any criminal or civil proceedings, other than proceedings for an alleged breach of regulations made under section 50(2).

**45 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 inspector as if—

- (a) references in that section to a constable were references to an inspector; and
- (b) the reference in that section to section 198 of that Act were a reference to section 39 or section 40 of this Act.

**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.

Section 45A: inserted, on 26 September 2008, by section 42 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Offences and penalties*

**46 Failing to provide required information to inventory agency**

Every person who fails, without reasonable excuse, to provide the information to the inventory agency required under regulations made under section 50(2)—

- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding,—
  - (i) in the case of an individual, \$5,000; or
  - (ii) in the case of a body corporate, \$30,000.

**47 Obstructing, hindering, resisting, or deceiving person exercising power under Part**

Every person—

- (a) commits an offence who—
  - (i) wilfully obstructs, hinders, resists, or deceives a person exercising a power conferred on that person under this Part or regulations made under this Part; or
  - (ii) wilfully interferes with any survey, investigation, test, or measurement carried out by an inspector under this Part; or
  - (iii) refuses to provide information that an inspector has demanded from that person under section 39(2)(d) or section 40(2)(c), except on the grounds of self-incrimination; and
- (b) is liable on conviction to a fine not exceeding,—
  - (i) in the case of an individual, \$5,000; or
  - (ii) in the case of a body corporate, \$30,000.

Section 47 heading: amended, on 26 September 2008, by section 43(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 47(a)(i): amended, on 26 September 2008, by section 43(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 47(a)(ii): amended, on 26 September 2008, by section 43(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**48 Signing false declaration in respect of regulations made under section 50**

Every person who signs a declaration that is required by regulations made under section 50, knowing the declaration to be false,—

- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding \$5,000.

Section 48 heading: amended, on 26 September 2008, by section 44 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**48A Providing false or misleading information to Registrar**

*[Repealed]*

Section 48A: repealed, on 26 September 2008, by section 45 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Miscellaneous provisions*

**49 Reporting**

For the purpose of reporting to the Secretariat under the Convention and the Protocol, the Minister responsible for the administration of this Act may, as and when the Minister thinks fit, direct the inventory agency or the Registrar to provide reports and information to the Minister or directly to the Secretariat.

Section 49: amended, on 26 September 2008, by section 46 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**50 Regulations**

(1) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes:

(a) *[Repealed]*

(b) prescribing agencies whose employees may act as inspectors under section 36, being—

(i) a Department of the Public Service listed in the First Schedule of the State Sector Act 1988; or

(ii) a Crown Research Institute within the meaning of the Crown Research Institutes Act 1992:

(c) *[Repealed]*

(ca) *[Repealed]*

(d) *[Repealed]*

(e) *[Repealed]*

(f) *[Repealed]*

(g) *[Repealed]*

(h) *[Repealed]*

(i) prescribing forms and notices for the purposes of this Part:

(j) for the purposes of, and subject to, Part 2, giving effect to the terms of the Convention and the Protocol, including any decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechan-

- isms, or other matters adopted, agreed on, made, or approved in accordance with the Convention or the Protocol:
- (k) providing for the matters that are contemplated by, or necessary for, giving full effect to this Part and for its due administration.
- (2) If recommended by the Minister, the Governor-General may, by Order in Council, make regulations requiring persons to keep and provide information to the inventory agency for the purpose of estimating New Zealand's human-induced emissions by sources and removals by sinks of greenhouse gases on any or all of the following:
- (a) emissions of greenhouse gases into the atmosphere from industrial or trade premises:
  - (b) volumes of fuel produced, distributed, sold, or used, and the nature of the use of that fuel:
  - (c) industrial processes, including by-products from industrial processes:
  - (d) composition of vehicle fleets and use of vehicles, including, but not limited to, distances travelled:
  - (e) imports and exports of hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride:
  - (f) imports, exports, manufacture, sales, and the nature of the use of products that contain hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride:
  - (g) waste composition and weight, dimensional characteristics of landfills, and volume of landfill gases extracted and combusted:
  - (h) numbers of ruminants and other farmed livestock and their performance:
  - (i) areas of crops and amounts produced:
  - (j) amount of nitrogenous and lime fertilisers used:
  - (k) native and planted trees, the amount of harvesting, the area of land in scrub, and the area of land in other land uses that are necessary to determine land use change under Article 3.3 or Article 3.4 of the Protocol.
- (3) If recommended by the Minister, the Governor-General may, by Order in Council, make regulations requiring persons to provide to the inventory agency information that the person

holds on any matter specified in subsection (2) for any year from 1989 to the current reporting year.

- (4) Regulations made under subsection (2) may specify the manner and form in which records must be kept and provided, including specifying that those records must be declared as true, the form of that declaration, and who must sign that declaration.
- (5) Regulations made under subsection (1) or (2) may be made in respect of different persons or classes of persons.
- (6) For the purposes of subsection (5), **classes of persons** includes local authorities.
- (7) Any regulations made under this section must be consistent with—
  - (a) this Act; and
  - (b) the Convention; and
  - (c) the Protocol.

Section 50(1)(a): repealed, on 26 September 2008, by section 47(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(c): repealed, on 26 September 2008, by section 47(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(ca): repealed, on 26 September 2008, by section 47(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(d): repealed, on 26 September 2008, by section 47(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(e): repealed, on 26 September 2008, by section 47(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(f): repealed, on 26 September 2008, by section 47(6) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(g): repealed, on 26 September 2008, by section 47(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(h): repealed, on 26 September 2008, by section 47(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(i): amended, on 26 September 2008, by section 47(9) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(k): amended, on 26 September 2008, by section 47(10) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(2): amended, on 26 September 2008, by section 47(11) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(3): amended, on 26 September 2008, by section 47(11) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(5): substituted, on 26 September 2008, by section 47(12) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 51: substituted, on 26 September 2008, by section 48 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**52 Inventory agency must report to Minister on certain matters before certain regulations are made**

- (1) Before regulations are made under section 50(2) or (3), the inventory agency must provide a report to the Minister on—
  - (a) whether or not the information to be collected under the regulations is reasonably available to the inventory agency by other means, including, but not limited to,—
    - (i) voluntary collection; or
    - (ii) collection from a government agency that holds the information (provided that the release of the information by that government agency complies with the principles of the Privacy Act 1993 and any provisions of the enactment under which the information was collected); and
  - (b) any deficiencies with collecting the information using those other means, including, but not limited to,—
    - (i) deficiencies in obtaining the required quality of information; and
    - (ii) the lack of certainty that all the required information can be provided; and
  - (c) whether or not the regulations are likely to place a disproportionate burden on any particular group of persons.
- (2) When preparing a report under subsection (1), the inventory agency must consult any person or government agency that is likely to be affected by the proposed regulations.
- (3) With respect to a report prepared under subsection (1), the Minister—
  - (a) must have regard to the report and to the results of consultation; and
  - (b) may make, as he or she thinks fit, recommendations to the Governor-General to make regulations under section 50(2) or (3).
- (4) The Minister may not recommend the making of regulations under section 50(2) and (3) unless he or she is satisfied, on reasonable grounds, that the regulations are necessary to assist

New Zealand to meet its obligations under the Convention or the Protocol.

Section 52 heading: amended, on 26 September 2008, by section 49(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 52(1): amended, on 26 September 2008, by section 49(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 52(3): amended, on 26 September 2008, by section 49(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 52(4): amended, on 26 September 2008, by section 49(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **53 Consequential amendments**

Section 31 of the Environment Act 1986 (1986 No 127) is amended by adding the following paragraph:

“(g) to carry out any other functions that may be conferred on the Ministry by any enactment.”

## Part 4

### New Zealand greenhouse gas emissions trading scheme

Part 4: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### Subpart 1—Participants

Subpart 1: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### 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.

Section 54: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 55: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 56: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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 application, 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 speci-

fied in the application, and notify the person that the activity has been entered on the register next to the person's name.

Section 57: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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).

Section 58: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 59: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 60: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 61: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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).

Section 62: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 63: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 64: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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).

Section 65: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 66: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 67: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## Subpart 2—Issuance and allocation of New Zealand units

Subpart 2: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 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.

Section 68: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 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).

Section 69: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 70: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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 mat-

ters 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.

Section 71: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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).

Section 72: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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 con-

- sumed 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 eleven-twelfths 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.

Section 73: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 74: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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 mat-

ters 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.

Section 75: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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 allocation 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 eleven-twelfths 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.

Section 76: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 77: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 78: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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 sub-

section (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.

Section 79: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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 disappplied 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.

Section 80: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 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.

Section 81: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 82: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 83: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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 determin-

- ation, 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).

Section 84: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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 number of New Zealand units that the per-

- son 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).

Section 85: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 86: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### Subpart 3—Chief executive

Subpart 3: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### *General administrative provisions*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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).

Section 87: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 88: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 89: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 90: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 91: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 92: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### *Verification and inquiry*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 93: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 94: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 95: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 96: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 97: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 98: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 99: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **100 Power of entry for investigation**

- (1) An enforcement officer may enter land or premises (excluding any dwellinghouse 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.

Section 100: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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).

Section 101: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 102: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 103: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 104: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 105: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 106: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Emissions rulings*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 107: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 108: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 109: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 110: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 111: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 112: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 113: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 114: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 115: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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).

Section 116: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 117: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### *Emissions returns*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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).

Section 118: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 119: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 120: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 121: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 122: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 123: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 124: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 125: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 126: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 127: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 128: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## Subpart 4—Offences and penalties

Subpart 4: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 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.

Section 129: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 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.

Section 130: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 131: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 132: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 133: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 134: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 135: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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 amend-

- ment 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.

Section 136: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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 associated 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.

Section 137: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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).

Section 138: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 139: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 140: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 141: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 142: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 143: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### Subpart 5—Review and appeal provisions

Subpart 5: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 144: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 145: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 146: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**Subpart 6—Miscellaneous provisions**

Subpart 6: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 147: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### 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.

Section 148: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### 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.

Section 149: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 150: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 151: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 152: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 153: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 154: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 155: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 156: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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).

Section 157: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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 liabil-

ity 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.

Section 158: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 159: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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).

Section 160: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 161: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 162: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 163: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 164: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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 con-

sult, 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.

Section 166: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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).

Section 167: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 168: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 169: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 170: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 171: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 172: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 173: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 174: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 175: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 176: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 177: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 178: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **Part 5**

### **Sector specific provisions**

Part 5: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **Subpart 1—Forestry sector**

Subpart 1: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### *General*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

- 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.

Section 179: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### *Pre-1990 forest land*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 180: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 181: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 183: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 184: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 185: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 186: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Post-1989 forest land*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 187: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 188: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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 rele-

- vant, 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).

Section 189: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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).

Section 190: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 191: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## 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.

Section 192: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

- 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.

Section 193: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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).

Section 194: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Post-1989 forest land and pre-1990 forest land*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 195: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### *Transitional provisions*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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).

Section 196: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 197: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### Subpart 2—Liquid fossil fuels sector

Subpart 2: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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).

Section 198: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 199: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 200: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 201: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 202: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 203: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **Subpart 3—Stationary energy sector**

Subpart 3: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **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.

Section 204: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 205: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 206: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 207: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 208: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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).

Section 209: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 210: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 211: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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.

Section 212: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### Subpart 4—Agriculture

Subpart 4: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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).

Section 213: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 214: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 215: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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.

Section 216: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **Subpart 5—Transitional provisions**

Subpart 5: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 217: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 218: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **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).

Section 219: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 220: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 221: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 222: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **Part 6 Other matters**

Part 6: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**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.

Section 223: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **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 224: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

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### Preamble

The Parties to this Convention,

Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind,

Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof,

Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated

responsibilities and respective capabilities and their social and economic conditions,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972,

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

Recalling the provisions of General Assembly resolution 44/228 of 22 December 1989 on the United Nations Conference on Environment and Development, and resolutions 43/53 of 6 December 1988, 44/207 of 22 December 1989, 45/212 of 21 December 1990 and 46/169 of 19 December 1991 on protection of global climate for present and future generations of mankind,

Recalling also the provisions of General Assembly resolution 44/206 of 22 December 1989 on the possible adverse effects of sea-level rise on islands and coastal areas, particularly low-lying coastal areas and the pertinent provisions of General Assembly resolution 44/172 of 19 December 1989 on the implementation of the Plan of Action to Combat Desertification,

Recalling further the Vienna Convention for the Protection of the Ozone Layer, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June 1990,

Noting the Ministerial Declaration of the Second World Climate Conference adopted on 7 November 1990,

Conscious of the valuable analytical work being conducted by many States on climate change and of the important contributions of the World Meteorological Organization, the United Nations Environment Programme and other organs, organizations and bodies of the United Nations system, as well as other international and intergovernmental bodies, to the exchange of results of scientific research and the coordination of research,

Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all greenhouse gases, with due consideration of their relative contributions to the enhancement of the greenhouse effect,

Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change,

Recognizing the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use and exportation, as a consequence of action taken on limiting greenhouse gas emissions,

Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the lat-

ter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,

Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consumption will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

Determined to protect the climate system for present and future generations,

Have agreed as follows:

#### ARTICLE 1 DEFINITIONS<sup>1</sup>

For the purposes of this Convention:

1. **Adverse effects of climate change** means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.
2. **Climate change** means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.
3. **Climate system** means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.
4. **Emissions** means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.

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<sup>1</sup> Titles of articles are included solely to assist the reader.

5. **Greenhouse gases** means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.
6. **Regional economic integration organization** means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.
7. **Reservoir** means a component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored.
8. **Sink** means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.
9. **Source** means any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere.

## ARTICLE 2 OBJECTIVE

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

## ARTICLE 3 PRINCIPLES

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated

- responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.
2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.
  3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.
  4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.
  5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

**ARTICLE 4 COMMITMENTS**

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:
  - (a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;
  - (b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;
  - (c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;
  - (d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;
  - (e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;
  - (f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and

- environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;
- (g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;
  - (h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;
  - (i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and
  - (j) Communicate to the Conference of the Parties information related to implementation, in accordance with Article 12.
2. The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:
- (a) Each of these Parties shall adopt national <sup>2</sup> policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed

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<sup>2</sup> This includes policies and measures adopted by regional economic integration organizations.

countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

- (b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;
- (c) Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of subparagraph (b) above should take into account the best available scientific knowledge, including of the effect-

- ive capacity of sinks and the respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter;
- (d) The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above. The Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in subparagraph (a) above. A second review of subparagraphs (a) and (b) shall take place not later than 31 December 1998, and thereafter at regular intervals determined by the Conference of the Parties, until the objective of the Convention is met;
  - (e) Each of these Parties shall :
    - (i) Coordinate as appropriate with other such Parties, relevant economic and administrative instruments developed to achieve the objective of the Convention; and
    - (ii) Identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol than would otherwise occur;
  - (f) The Conference of the Parties shall review, not later than 31 December 1998, available information with a view to taking decisions regarding such amendments to the lists in Annexes I and II as may be appropriate, with the approval of the Party concerned;
  - (g) Any Party not included in Annex I may, in its instrument of ratification, acceptance, approval or accession, or at

any time thereafter, notify the Depositary that it intends to be bound by subparagraphs (a) and (b) above. The Depositary shall inform the other signatories and Parties of any such notification.

3. The developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.
4. The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.
5. The developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.
6. In the implementation of their commitments under paragraph 2 above, a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in Annex I undergoing the process of transition to a market economy, in

order to enhance the ability of these Parties to address climate change, including with regard to the historical level of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol chosen as a reference.

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.
8. In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:
  - (a) Small island countries;
  - (b) Countries with low-lying coastal areas;
  - (c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;
  - (d) Countries with areas prone to natural disasters;
  - (e) Countries with areas liable to drought and desertification;
  - (f) Countries with areas of high urban atmospheric pollution;
  - (g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
  - (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and
  - (i) Land-locked and transit countries.

Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.

9. The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.
10. The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.

#### **ARTICLE 5 RESEARCH AND SYSTEMATIC OBSERVATION**

In carrying out their commitments under Article 4, paragraph 1(g), the Parties shall:

- (a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort;
- (b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and
- (c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

## **ARTICLE 6 EDUCATION, TRAINING AND PUBLIC AWARENESS**

In carrying out their commitments under Article 4, paragraph 1(i), the Parties shall:

- (a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:
  - (i) The development and implementation of educational and public awareness programmes on climate change and its effects;
  - (ii) Public access to information on climate change and its effects;
  - (iii) Public participation in addressing climate change and its effects and developing adequate responses; and
  - (iv) Training of scientific, technical and managerial personnel.
- (b) Cooperate in and promote, at the international level, and, where appropriate, using existing bodies:
  - (i) The development and exchange of educational and public awareness material on climate change and its effects; and
  - (ii) The development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to train experts in this field, in particular for developing countries.

## **ARTICLE 7 CONFERENCE OF THE PARTIES**

1. A Conference of the Parties is hereby established.
2. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To this end, it shall:

- (a) Periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;
- (b) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;
- (c) Facilitate, at the request of two or more Parties, the co-ordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;
- (d) Promote and guide, in accordance with the objective and provisions of the Convention, the development and periodic refinement of comparable methodologies, to be agreed on by the Conference of the Parties, inter alia, for preparing inventories of greenhouse gas emissions by sources and removals by sinks, and for evaluating the effectiveness of measures to limit the emissions and enhance the removals of these gases;
- (e) Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the Parties, the overall effects of the measures taken pursuant to the Convention, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;
- (f) Consider and adopt regular reports on the implementation of the Convention and ensure their publication;
- (g) Make recommendations on any matters necessary for the implementation of the Convention;
- (h) Seek to mobilize financial resources in accordance with Article 4, paragraphs 3, 4 and 5, and Article 11;

- (i) Establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;
  - (j) Review reports submitted by its subsidiary bodies and provide guidance to them;
  - (k) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and for any subsidiary bodies;
  - (l) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and
  - (m) Exercise such other functions as are required for the achievement of the objective of the Convention as well as all other functions assigned to it under the Convention.
3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure as well as those of the subsidiary bodies established by the Convention, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.
4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in Article 21 and shall take place not later than one year after the date of entry into force of the Convention. Thereafter, ordinary sessions of the Conference of the Parties shall be held every year unless otherwise decided by the Conference of the Parties.
5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.
6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers. Any body or agency, whether national or inter-

national, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

#### **ARTICLE 8 SECRETARIAT**

1. A secretariat is hereby established.
2. The functions of the secretariat shall be:
  - (a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;
  - (b) To compile and transmit reports submitted to it;
  - (c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;
  - (d) To prepare reports on its activities and present them to the Conference of the Parties;
  - (e) To ensure the necessary coordination with the secretariats of other relevant international bodies;
  - (f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
  - (g) To perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.
3. The Conference of the Parties, at its first session, shall designate a permanent secretariat and make arrangements for its functioning.

**ARTICLE 9 SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE**

1. A subsidiary body for scientific and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on scientific and technological matters relating to the Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.
2. Under the guidance of the Conference of the Parties, and drawing upon existing competent international bodies, this body shall:
  - (a) Provide assessments of the state of scientific knowledge relating to climate change and its effects;
  - (b) Prepare scientific assessments on the effects of measures taken in the implementation of the Convention;
  - (c) Identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting development and/or transferring such technologies;
  - (d) Provide advice on scientific programmes, international cooperation in research and development related to climate change, as well as on ways and means of supporting endogenous capacity-building in developing countries; and
  - (e) Respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.
3. The functions and terms of reference of this body may be further elaborated by the Conference of the Parties.

**ARTICLE 10 SUBSIDIARY BODY FOR IMPLEMENTATION**

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. This body shall be open to participation by all Parties and comprise

- government representatives who are experts on matters related to climate change. It shall report regularly to the Conference of the Parties on all aspects of its work.
2. Under the guidance of the Conference of the Parties, this body shall:
    - (a) Consider the information communicated in accordance with Article 12, paragraph 1, to assess the overall aggregated effect of the steps taken by the Parties in the light of the latest scientific assessments concerning climate change;
    - (b) Consider the information communicated in accordance with Article 12, paragraph 2, in order to assist the Conference of the Parties in carrying out the reviews required by Article 4, paragraph 2(d); and
    - (c) Assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

#### **ARTICLE 11 FINANCIAL MECHANISM**

1. A mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology, is hereby defined. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this Convention. Its operation shall be entrusted to one or more existing international entities.
2. The financial mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance.
3. The Conference of the Parties and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:
  - (a) Modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties;
  - (b) Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities and eligibility criteria;

- (c) Provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above; and
  - (d) Determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.
- 4. The Conference of the Parties shall make arrangements to implement the above-mentioned provisions at its first session, reviewing and taking into account the interim arrangements referred to in Article 21, paragraph 3, and shall decide whether these interim arrangements shall be maintained. Within four years thereafter, the Conference of the Parties shall review the financial mechanism and take appropriate measures.
- 5. The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.

#### **ARTICLE 12 COMMUNICATION OF INFORMATION RELATED TO IMPLEMENTATION**

- 1. In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:
  - (a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;
  - (b) A general description of steps taken or envisaged by the Party to implement the Convention; and
  - (c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.

2. Each developed country Party and each other Party included in Annex I shall incorporate in its communication the following elements of information:
  - (a) A detailed description of the policies and measures that it has adopted to implement its commitment under Article 4, paragraphs 2(a) and 2(b); and
  - (b) A specific estimate of the effects that the policies and measures referred to in subparagraph (a) immediately above will have on anthropogenic emissions by its sources and removals by its sinks of greenhouse gases during the period referred to in Article 4, paragraph 2(a).
3. In addition, each developed country Party and each other developed Party included in Annex II shall incorporate details of measures taken in accordance with Article 4, paragraphs 3, 4 and 5.
4. Developing country Parties may, on a voluntary basis, propose projects for financing, including specific technologies, materials, equipment, techniques or practices that would be needed to implement such projects, along with, if possible, an estimate of all incremental costs, of the reductions of emissions and increments of removals of greenhouse gases, as well as an estimate of the consequent benefits.
5. Each developed country Party and each other Party included in Annex I shall make its initial communication within six months of the entry into force of the Convention for that Party. Each Party not so listed shall make its initial communication within three years of the entry into force of the Convention for that Party, or of the availability of financial resources in accordance with Article 4, paragraph 3. Parties that are least developed countries may make their initial communication at their discretion. The frequency of subsequent communications by all Parties shall be determined by the Conference of the Parties, taking into account the differentiated timetable set by this paragraph.
6. Information communicated by Parties under this Article shall be transmitted by the secretariat as soon as possible to the Conference of the Parties and to any subsidiary bodies concerned. If necessary, the procedures for the communication of infor-

mation may be further considered by the Conference of the Parties.

7. From its first session, the Conference of the Parties shall arrange for the provision to developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article, as well as in identifying the technical and financial needs associated with proposed projects and response measures under Article 4. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.
8. Any group of Parties may, subject to guidelines adopted by the Conference of the Parties, and to prior notification to the Conference of the Parties, make a joint communication in fulfilment of their obligations under this Article, provided that such a communication includes information on the fulfilment by each of these Parties of its individual obligations under the Convention.
9. Information received by the secretariat that is designated by a Party as confidential, in accordance with criteria to be established by the Conference of the Parties, shall be aggregated by the secretariat to protect its confidentiality before being made available to any of the bodies involved in the communication and review of information.
10. Subject to paragraph 9 above, and without prejudice to the ability of any Party to make public its communication at any time, the secretariat shall make communications by Parties under this Article publicly available at the time they are submitted to the Conference of the Parties.

### **ARTICLE 13 RESOLUTION OF QUESTIONS REGARDING IMPLEMENTATION**

The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.

**ARTICLE 14 SETTLEMENT OF DISPUTES**

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation:
  - (a) Submission of the dispute to the International Court of Justice, and/or
  - (b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.
4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute otherwise agree.
5. Subject to the operation of paragraph 2 above, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a recommendatory award, which the parties shall consider in good faith.
7. Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.
8. The provisions of this Article shall apply to any related legal instrument which the Conference of the Parties may adopt, unless the instrument provides otherwise.

#### **ARTICLE 15 AMENDMENTS TO THE CONVENTION**

1. Any Party may propose amendments to the Convention.
2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to the Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to the Convention.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.
6. For the purposes of this Article, **Parties present and voting** means Parties present and casting an affirmative or negative vote.

#### **ARTICLE 16 ADOPTION AND AMENDMENT OF ANNEXES TO THE CONVENTION**

1. Annexes to the Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto. Without prejudice to the provisions of Article 14, paragraphs 2(b) and 7, such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.
2. Annexes to the Convention shall be proposed and adopted in accordance with the procedure set forth in Article 15, paragraphs 2, 3 and 4.
3. An annex that has been adopted in accordance with paragraph 2 above shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex. The annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.
4. The proposal, adoption and entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the proposal, adoption and entry into force of annexes to the Convention in accordance with paragraphs 2 and 3 above.
5. If the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amend-

ment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.

#### **ARTICLE 17 PROTOCOLS**

1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention.
2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.
3. The requirements for the entry into force of any protocol shall be established by that instrument.
4. Only Parties to the Convention may be Parties to a protocol.
5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

#### **ARTICLE 18 RIGHT TO VOTE**

1. Each Party to the Convention shall have one vote, except as provided for in paragraph 2 below.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

#### **ARTICLE 19 DEPOSITARY**

The Secretary-General of the United Nations shall be the Depositary of the Convention and of protocols adopted in accordance with Article 17.

#### **ARTICLE 20 SIGNATURE**

This Convention shall be open for signature by States Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations at Rio de Janeiro, during the United Nations Conference on Environment and Development, and thereafter at United Nations Headquarters in New York from 20 June 1992 to 19 June 1993.

**ARTICLE 21 INTERIM ARRANGEMENTS**

1. The secretariat functions referred to in Article 8 will be carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 45/212 of 21 December 1990, until the completion of the first session of the Conference of the Parties.
2. The head of the interim secretariat referred to in paragraph 1 above will cooperate closely with the Intergovernmental Panel on Climate Change to ensure that the Panel can respond to the need for objective scientific and technical advice. Other relevant scientific bodies could also be consulted.
3. The Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the international entity entrusted with the operation of the financial mechanism referred to in Article 11 on an interim basis. In this connection, the Global Environment Facility should be appropriately restructured and its membership made universal to enable it to fulfil the requirements of Article 11.

**ARTICLE 22 RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION**

1. The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes a Party to the Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

#### **ARTICLE 23 ENTRY INTO FORCE**

1. The Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.
2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

#### **ARTICLE 24 RESERVATIONS**

No reservations may be made to the Convention.

#### **ARTICLE 25 WITHDRAWAL**

1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

**ARTICLE 26 AUTHENTIC TEXTS**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

**IN WITNESS WHEREOF** the undersigned, being duly authorized to that effect, have signed this Convention.

**DONE** at New York this ninth day of May one thousand nine hundred and ninety-two.

**Annex I**

- Australia
- Austria
- Belarus<sup>3</sup>
- Belgium
- Bulgaria<sup>3</sup>
- Canada
- Croatia<sup>34</sup>
- Czech Republic<sup>34</sup>
- Denmark
- European Economic Community
- Estonia<sup>3</sup>
- Finland
- France
- Germany
- Greece
- Hungary<sup>3</sup>
- Iceland
- Ireland
- Italy
- Japan
- Latvia<sup>3</sup>

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<sup>3</sup> Countries that are undergoing the process of transition to a market economy.

<sup>4</sup> Countries added to Annex I by an amendment that entered into force on 13 August 1998 pursuant to decision 4/CP.3 adopted at COP 3.

- Liechtenstein<sup>4</sup>
  - Lithuania<sup>3</sup>
  - Luxembourg
  - Monaco<sup>4</sup>
  - Netherlands
  - New Zealand
  - Norway
  - Poland<sup>3</sup>
  - Portugal
  - Romania<sup>3</sup>
  - Russian Federation<sup>3</sup>
  - Slovakia<sup>34</sup>
  - Slovenia<sup>34</sup>
  - Spain
  - Sweden
  - Switzerland
  - Turkey
  - Ukraine<sup>3</sup>
  - United Kingdom of Great Britain and Northern Ireland
  - United States of America
- 

## **Annex II**

- Australia
- Austria
- Belgium
- Canada
- Denmark
- European Economic Community
- Finland
- France
- Germany
- Greece
- Iceland

- Ireland
- Italy
- Japan
- Luxembourg
- Netherlands
- New Zealand
- Norway
- Portugal
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom of Great Britain and Northern Ireland
- United States of America

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## Schedule 2

s 4

### **Kyoto Protocol to the United Nations Framework Convention on Climate Change**

#### **Preamble**

*The Parties to this Protocol,*

*Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as **the Convention**,*

*In pursuit of the ultimate objective of the Convention as stated in its Article 2,*

*Recalling the provisions of the Convention,*

*Being guided by Article 3 of the Convention,*

*Pursuant to the Berlin Mandate adopted by decision 1/CP.1 of the Conference of the Parties to the Convention at its first session,*

Have agreed as follows:

**Article 1** For the purposes of this Protocol, the definitions contained in Article 1 of the Convention shall apply. In addition:

1. **Conference of the Parties** means the Conference of the Parties to the Convention.
2. **Convention** means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.
3. **Intergovernmental Panel on Climate Change** means the Intergovernmental Panel on Climate Change established in 1988 jointly by the World Meteorological Organization and the United Nations Environment Programme.
4. **Montreal Protocol** means the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Montreal on 16 September 1987 and as subsequently adjusted and amended.
5. **Parties present and voting** means Parties present and casting an affirmative or negative vote.
6. **Party** means, unless the context otherwise indicates, a Party to this Protocol.
7. **Party included in Annex I** means a Party included in Annex I to the Convention, as may be amended, or a Party which has made a notification under Article 4, paragraph 2(g), of the Convention.

**Article 2**

1. Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:
  - (a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:
    - (i) Enhancement of energy efficiency in relevant sectors of the national economy;
    - (ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;

- (iii) Promotion of sustainable forms of agriculture in light of climate change considerations;
  - (iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;
  - (v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;
  - (vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;
  - (vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;
  - (viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;
- (b) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this Article, pursuant to Article 4, paragraph 2(e)(i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, consider ways to facilitate such cooperation, taking into account all relevant information.

2. The Parties included in Annex I shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively.
3. The Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol, if it decides that it would be beneficial to coordinate any of the policies and measures in paragraph 1(a) above, taking into account different national circumstances and potential effects, shall consider ways and means to elaborate the coordination of such policies and measures.

### **Article 3**

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.
2. Each Party included in Annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol.
3. The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, re-

forestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I. The greenhouse gas emissions by sources and removals by sinks associated with those activities shall be reported in a transparent and verifiable manner and reviewed in accordance with Articles 7 and 8.

4. Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party included in Annex I shall provide, for consideration by the Subsidiary Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be added to, or subtracted from, the assigned amounts for Parties included in Annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with Article 5 and the decisions of the Conference of the Parties. Such a decision shall apply in the second and subsequent commitment periods. A Party may choose to apply such a decision on these additional human-induced activities for its first commitment period, provided that these activities have taken place since 1990.
5. The Parties included in Annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to decision 9/CP.2 of the Conference of the Parties at its second session shall use that base year or period for the implementation of their commitments under this Article. Any other Party included in Annex I undergoing the process of transition to a market economy which has not yet submitted its first national communication under Article 12 of

the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this Article. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall decide on the acceptance of such notification.

6. Taking into account Article 4, paragraph 6, of the Convention, in the implementation of their commitments under this Protocol other than those under this Article, a certain degree of flexibility shall be allowed by the Conference of the Parties serving as the meeting of the Parties to this Protocol to the Parties included in Annex I undergoing the process of transition to a market economy.
7. In the first quantified emission limitation and reduction commitment period, from 2008 to 2012, the assigned amount for each Party included in Annex I shall be equal to the percentage inscribed for it in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by five. Those Parties included in Annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.
8. Any Party included in Annex I may use 1995 as its base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, for the purposes of the calculation referred to in paragraph 7 above.
9. Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol, which shall be adopted in accordance with the provisions of Article 21, paragraph 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least

seven years before the end of the first commitment period referred to in paragraph 1 above.

10. Any emission reduction units, or any part of an assigned amount, which a Party acquires from another Party in accordance with the provisions of Article 6 or of Article 17 shall be added to the assigned amount for the acquiring Party.
11. Any emission reduction units, or any part of an assigned amount, which a Party transfers to another Party in accordance with the provisions of Article 6 or of Article 17 shall be subtracted from the assigned amount for the transferring Party.
12. Any certified emission reductions which a Party acquires from another Party in accordance with the provisions of Article 12 shall be added to the assigned amount for the acquiring Party.
13. If the emissions of a Party included in Annex I in a commitment period are less than its assigned amount under this Article, this difference shall, on request of that Party, be added to the assigned amount for that Party for subsequent commitment periods.
14. Each Party included in Annex I shall strive to implement the commitments mentioned in paragraph 1 above in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particularly those identified in Article 4, paragraphs 8 and 9, of the Convention. In line with relevant decisions of the Conference of the Parties on the implementation of those paragraphs, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, consider what actions are necessary to minimize the adverse effects of climate change and/or the impacts of response measures on Parties referred to in those paragraphs. Among the issues to be considered shall be the establishment of funding, insurance and transfer of technology.

#### **Article 4**

1. Any Parties included in Annex I that have reached an agreement to fulfil their commitments under Article 3 jointly, shall be deemed to have met those commitments provided

that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of Article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.

2. The Parties to any such agreement shall notify the secretariat of the terms of the agreement on the date of deposit of their instruments of ratification, acceptance or approval of this Protocol, or accession thereto. The secretariat shall in turn inform the Parties and signatories to the Convention of the terms of the agreement.
3. Any such agreement shall remain in operation for the duration of the commitment period specified in Article 3, paragraph 7.
4. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization, any alteration in the composition of the organization after adoption of this Protocol shall not affect existing commitments under this Protocol. Any alteration in the composition of the organization shall only apply for the purposes of those commitments under Article 3 that are adopted subsequent to that alteration.
5. In the event of failure by the Parties to such an agreement to achieve their total combined level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement.
6. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Protocol, each member State of that regional economic integration organization individually, and together with the regional economic integration organization acting in accordance with Article 24, shall, in the event of failure to achieve the total combined level of emission reductions, be responsible for its level of emissions as notified in accordance with this Article.

**Article 5**

1. Each Party included in Annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session.
2. Methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only for the purposes of ascertaining compliance with commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.
3. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in Annex A shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of

the Parties to this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to a global warming potential shall apply only to commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

#### **Article 6**

1. For the purpose of meeting its commitments under Article 3, any Party included in Annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, provided that:
  - (a) Any such project has the approval of the Parties involved;
  - (b) Any such project provides a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur;
  - (c) It does not acquire any emission reduction units if it is not in compliance with its obligations under Articles 5 and 7; and
  - (d) The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under Article 3.
2. The Conference of the Parties serving as the meeting of the Parties to this Protocol may, at its first session or as soon as practicable thereafter, further elaborate guidelines for the implementation of this Article, including for verification and reporting.
3. A Party included in Annex I may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition under this Article of emission reduction units.
4. If a question of implementation by a Party included in Annex I of the requirements referred to in this Article is identified in accordance with the relevant provisions of Article 8, transfers and acquisitions of emission reduction units may continue to be made after the question has been identified, provided that

any such units may not be used by a Party to meet its commitments under Article 3 until any issue of compliance is resolved.

#### **Article 7**

1. Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.
2. Each Party included in Annex I shall incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.
3. Each Party included in Annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this Article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this Article, taking into account guidelines for the preparation of national communications by Parties included in Annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall also, prior to the first com-

mitment period, decide upon modalities for the accounting of assigned amounts.

#### **Article 8**

1. The information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under Article 7, paragraph 1, by each Party included in Annex I shall be reviewed as part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under Article 7, paragraph 2, by each Party included in Annex I shall be reviewed as part of the review of communications.
2. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the Conference of the Parties.
3. The review process shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol. The expert review teams shall prepare a report to the Conference of the Parties serving as the meeting of the Parties to this Protocol, assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments. Such reports shall be circulated by the secretariat to all Parties to the Convention. The secretariat shall list those questions of implementation indicated in such reports for further consideration by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the review of implementation of this Protocol by expert review teams taking into account the relevant decisions of the Conference of the Parties.

5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, with the assistance of the Subsidiary Body for Implementation and, as appropriate, the Subsidiary Body for Scientific and Technological Advice, consider:
  - (a) The information submitted by Parties under Article 7 and the reports of the expert reviews thereon conducted under this Article; and
  - (b) Those questions of implementation listed by the secretariat under paragraph 3 above, as well as any questions raised by Parties.
6. Pursuant to its consideration of the information referred to in paragraph 5 above, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take decisions on any matter required for the implementation of this Protocol.

**Article 9**

1. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information. Such reviews shall be coordinated with pertinent reviews under the Convention, in particular those required by Article 4, paragraph 2(d), and Article 7, paragraph 2(a), of the Convention. Based on these reviews, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take appropriate action.
2. The first review shall take place at the second session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Further reviews shall take place at regular intervals and in a timely manner.

**Article 10**

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance

the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

- (a) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consistent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;
- (b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:
  - (i) Such programmes would, inter alia, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change; and
  - (ii) Parties included in Annex I shall submit information on action under this Protocol, including national programmes, in accordance with Article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity building and adaptation measures;

- (c) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;
- (d) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention;
- (e) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account Article 6 of the Convention;

- (f) Include in their national communications information on programmes and activities undertaken pursuant to this Article in accordance with relevant decisions of the Conference of the Parties; and
- (g) Give full consideration, in implementing the commitments under this Article, to Article 4, paragraph 8, of the Convention.

#### **Article 11**

1. In the implementation of Article 10, Parties shall take into account the provisions of Article 4, paragraphs 4, 5, 7, 8 and 9, of the Convention.
2. In the context of the implementation of Article 4, paragraph 1, of the Convention, in accordance with the provisions of Article 4, paragraph 3, and Article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in Annex II to the Convention shall:
  - (a) Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under Article 4, paragraph 1(a), of the Convention that are covered in Article 10, subparagraph (a); and
  - (b) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of advancing the implementation of existing commitments under Article 4, paragraph 1, of the Convention that are covered by Article 10 and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention, in accordance with that Article.

The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Con-

ference of the Parties, including those agreed before the adoption of this Protocol, shall apply *mutatis mutandis* to the provisions of this paragraph.

3. The developed country Parties and other developed Parties in Annex II to the Convention may also provide, and developing country Parties avail themselves of, financial resources for the implementation of Article 10, through bilateral, regional and other multilateral channels.

#### **Article 12**

1. A clean development mechanism is hereby defined.
2. The purpose of the clean development mechanism shall be to assist Parties not included in Annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation and reduction commitments under Article 3.
3. Under the clean development mechanism:
  - (a) Parties not included in Annex I will benefit from project activities resulting in certified emission reductions; and
  - (b) Parties included in Annex I may use the certified emission reductions accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under Article 3, as determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
4. The clean development mechanism shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Protocol and be supervised by an executive board of the clean development mechanism.
5. Emission reductions resulting from each project activity shall be certified by operational entities to be designated by the Conference of the Parties serving as the meeting of the Parties to this Protocol, on the basis of:
  - (a) Voluntary participation approved by each Party involved;
  - (b) Real, measurable, and long-term benefits related to the mitigation of climate change; and

- (c) Reductions in emissions that are additional to any that would occur in the absence of the certified project activity.
- 6. The clean development mechanism shall assist in arranging funding of certified project activities as necessary.
- 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, elaborate modalities and procedures with the objective of ensuring transparency, efficiency and accountability through independent auditing and verification of project activities.
- 8. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.
- 9. Participation under the clean development mechanism, including in activities mentioned in paragraph 3(a) above and in the acquisition of certified emission reductions, may involve private and/or public entities, and is to be subject to whatever guidance may be provided by the executive board of the clean development mechanism.
- 10. Certified emission reductions obtained during the period from the year 2000 up to the beginning of the first commitment period can be used to assist in achieving compliance in the first commitment period.

**Article 13**

- 1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Protocol.
- 2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:
  - (a) Assess, on the basis of all information made available to it in accordance with the provisions of this Protocol, the implementation of this Protocol by the Parties, the overall effects of the measures taken pursuant to this Protocol, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;
  - (b) Periodically examine the obligations of the Parties under this Protocol, giving due consideration to any reviews required by Article 4, paragraph 2(d), and Article 7, paragraph 2, of the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge, and in this respect consider and adopt regular reports on the implementation of this Protocol;
  - (c) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;
  - (d) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities

- of the Parties and their respective commitments under this Protocol;
- (e) Promote and guide, in accordance with the objective of the Convention and the provisions of this Protocol, and taking fully into account the relevant decisions by the Conference of the Parties, the development and periodic refinement of comparable methodologies for the effective implementation of this Protocol, to be agreed on by the Conference of the Parties serving as the meeting of the Parties to this Protocol;
  - (f) Make recommendations on any matters necessary for the implementation of this Protocol;
  - (g) Seek to mobilize additional financial resources in accordance with Article 11, paragraph 2;
  - (h) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;
  - (i) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and
  - (j) Exercise such other functions as may be required for the implementation of this Protocol, and consider any assignment resulting from a decision by the Conference of the Parties.
5. The rules of procedure of the Conference of the Parties and financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held every year and in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.
8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Protocol and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Protocol as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

**Article 14**

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Protocol.
2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.

**Article 15**

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve as, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol. The provisions relating to the functioning of these

two bodies under the Convention shall apply *mutatis mutandis* to this Protocol. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.
3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Protocol, any member of the Bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

#### **Article 16**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, as soon as practicable, consider the application to this Protocol of, and modify as appropriate, the multilateral consultative process referred to in Article 13 of the Convention, in the light of any relevant decisions that may be taken by the Conference of the Parties. Any multilateral consultative process that may be applied to this Protocol shall operate without prejudice to the procedures and mechanisms established in accordance with Article 18.

#### **Article 17**

The Conference of the Parties shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading. The Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments under Article 3. Any such trading shall be supplemental to domestic ac-

tions for the purpose of meeting quantified emission limitation and reduction commitments under that Article.

**Article 18**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol.

**Article 19**

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Protocol.

**Article 20**

1. Any Party may propose amendments to this Protocol.
2. Amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed amendments to the Parties and signatories to the Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the

date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

#### **Article 21**

1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.
2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.
3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary.
4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
5. An annex, or amendment to an annex other than Annex A or B, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol

six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.
7. Amendments to Annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set out in Article 20, provided that any amendment to Annex B shall be adopted only with the written consent of the Party concerned.

#### **Article 22**

1. Each Party shall have one vote, except as provided for in paragraph 2 below.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

#### **Article 23**

The Secretary-General of the United Nations shall be the Depositary of this Protocol.

#### **Article 24**

1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratifi-

cation, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. In the case of such organizations, one or more of whose member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.
3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

#### Article 25

1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.
2. For the purposes of this Article, **the total carbon dioxide emissions for 1990 of the Parties included in Annex I** means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex I in their first national communications submitted in accordance with Article 12 of the Convention.
3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of

deposit of its instrument of ratification, acceptance, approval or accession.

4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

#### **Article 26**

No reservations may be made to this Protocol.

#### **Article 27**

1. At any time after three years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol.

#### **Article 28**

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

**DONE** at Kyoto this eleventh day of December one thousand nine hundred and ninety-seven.

**IN WITNESS WHEREOF** the undersigned, being duly authorized to that effect, have affixed their signatures to this Protocol on the dates indicated.

### **Annex A**

#### **Greenhouse gases**

Carbon dioxide (CO<sub>2</sub>)

Methane (CH<sub>4</sub>)

Nitrous oxide (N<sub>2</sub>O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur hexafluoride (SF<sub>6</sub>)

**Sectors/source categories**

Energy

- Fuel combustion
  - Energy industries
  - Manufacturing industries and construction
  - Transport
  - Other sectors
  - Other
- Fugitive emissions from fuels
  - Solid fuels
  - Oil and natural gas
  - Other

Industrial processes

- Mineral products
- Chemical industry
- Metal production
- Other production
- Production of halocarbons and sulphur hexafluoride
- Consumption of halocarbons and sulphur hexafluoride
- Other

Solvent and other product use

Agriculture

- Enteric fermentation
- Manure management
- Rice cultivation
- Agricultural soils
- Prescribed burning of savannas
- Field burning of agricultural residues
- Other

## Waste

- Solid waste disposal on land
  - Wastewater handling
  - Waste incineration
  - Other
- 

**Annex B**

<u>Party</u>	<u>Quantified emission limitation or reduction commitment (percentage of base year or period)</u>
Australia	108
Austria	92
Belgium	92
Bulgaria*	92
Canada	94
Croatia*	95
Czech Republic*	92
Denmark	92
Estonia*	92
European Community	92
Finland	92
France	92
Germany	92
Greece	92
Hungary*	94

<u>Party</u>	<u>Quantified emission limitation or reduction commitment (percentage of base year or period)</u>
Iceland	110
Ireland	92
Italy	92
Japan	94
Latvia*	92
Liechtenstein	92
Lithuania*	92
Luxembourg	92
Monaco	92
Netherlands	92
New Zealand	100
Norway	101
Poland*	94
Portugal	92
Romania*	92
Russian Federation*	100
Slovakia*	92
Slovenia*	92
Spain	92
Sweden	92
Switzerland	92

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<u>Party</u>	<u>Quantified emission limitation or reduction commitment (percentage of base year or period)</u>
Ukraine*	100
United Kingdom of Great Britain Northern Ireland	92
United States of America	93

\* Countries that are undergoing the process of transition to a market economy.

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### Schedule 3

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

### Activities with respect to which persons must be participants

Schedule 3: added, on 26 September 2008, by section 52 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### 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.

Part 3—*continued*

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.

Part 4—*continued*

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

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Part 5—*continued*

- (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.

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## Schedule 4

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

### Activities with respect to which persons may be participants

Schedule 4: added, on 26 September 2008, by section 52 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### 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

Part 2—*continued*

- (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

Part 5—*continued*

- (c) where the total number of animals, or emissions from those animals, exceeds the prescribed amount.
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## **Climate Change Response (Emissions Trading) Amendment Act 2008**

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

- 1    Title**  
This Act is the Climate Change Response (Emissions Trading) Amendment Act 2008.
- 2    Commencement**
- (1) Sections 165 and 182 of the Climate Change Response Act 2002 (as inserted by section 50 of this Act) come into force on a date to be appointed by the Governor-General by Order in Council on the recommendation of the Minister responsible for the administration of the Climate Change Response Act 2002 made in accordance with section 53 of this Act.
  - (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.
- 51    Regulations upon which consultation has been undertaken before commencement of this section**
- (1) Any consultation undertaken before the commencement of section 50 in respect of the making of any order or regulations or any other matter requiring consultation under the Climate Change Response Act 2002 is to be treated as consultation for the purposes of that Act.
  - (2) However, section 166(1) and (3) of the Climate Change Response Act 2002 do not apply to any regulations that come into force after the commencement of section 50 but are based on consultation undertaken prior to the commencement of section 50.
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**Notes****1 General**

This is an eprint of the Climate Change Response Act 2002. It incorporates all the amendments to the Climate Change Response Act 2002 as at 26 September 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

**2 About this eprint**

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

**3 List of amendments incorporated in this eprint (most recent first)**

Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85)

Climate Change Response Act Commencement Order 2007 (SR 2007/336)

Property Law Act 2007 (2007 No 91): section 364(1)

Climate Change Response Amendment Act 2006 (2006 No 59)

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