

Sustainable Biofuel Obligation Bill

Government Bill

Explanatory note

General policy statement

To assist with the transition from liquid fossil fuels to low-emissions fuels and reduce the greenhouse gas emissions from transport, the Government is introducing a sustainable biofuels obligation.

The Bill introduces an obligation for any person or company that imports or refines more than 50,000 litres of liquid fossil fuels for transport in New Zealand to reduce the greenhouse gas emissions intensity of those fuels by also supplying sustainable biofuels. The obligation excludes aviation fuels.

The required emission intensity reduction percentages for 2024 to 2035 are set out in *Schedule 2*. The percentages for 2024 to 2025 are fixed. The percentages for 2026 to 2035 can be reviewed by the responsible Minister after consulting with such persons as the Minister considers appropriate and considering a set of criteria. This will assist with keeping the emissions intensity reduction percentages at an appropriate level should there be significant change that would make the provisional targets for 2026 to 2035 too low or too high.

The Bill requires the responsible Minister to recommend regulations which set out how biofuels will be determined to be sustainable. Before recommending, the Minister must first consider a set of matters provided in the Bill, except in the case of biofuels created from specified waste or residue products. In that case, the set of matters does not have to be first considered. The regulations will provide assurance that biofuels are not being produced at the expense of other environmental and social outcomes. They will allow for the excluding or limiting of the use of particular biofuels to meet the obligations. It also requires the emissions intensity of biofuels and liquid fossil fuels to be assessed based on life-cycle emissions (that is, the cumulative emissions from each part of the production and supply chain), although alterations to this life-cycle assessment can be made for biofuels made from specified waste or residue products. This will ensure that emissions that occur overseas for either fuel are

accounted for and the obligation is effective in reducing global emissions. The Bill also allows the Minister to make regulations concerning certification schemes which could play a role in certifying the sustainability and emissions intensity of biofuels along the supply chain.

The Bill also provides for—

- flexibility mechanisms that allow obligated parties to trade emissions reductions between each other, or to “bank” emissions reductions into the next year, or “borrow” them from the next year. This assists the obligated parties to more easily manage small deficits or surpluses in their achievement of the emissions intensity reductions and smooth the cost of meeting the obligation between years:
- a requirement for obligated parties to report on their achievement of the emissions intensity reduction percentage annually:
- powers for the Environmental Protection Authority to monitor and enforce the new requirements, including by means of a civil pecuniary penalty for noncompliance of \$800 per tonne of carbon dioxide equivalent emissions not achieved.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=182>

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 8 November 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.mbie.govt.nz/have-your-say/increasing-the-use-of-sustainable-bio-fuels-in-aotearoa-new-zealand/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Act to commence on **1 April 2024**.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill, which is to provide for an obligation to reduce greenhouse gas emissions by increasing the supply and use of sustainable bio-fuels for transport purposes.

Clause 4 sets out an overview of the Bill.

Clause 5 defines terms used in the Bill.

Clause 6 and Schedule 1 provide for transitional provisions.

Clause 7 provides for the Bill to bind the Crown.

Part 2

Biofuel obligation

Subpart 1 imposes the biofuel obligation, which requires obliged persons to ensure that their percentage reduction of emissions intensity, across their liquid transport fuels, is at least equal to, or higher than, the required target that applies to that year. The emissions intensity reduction would be calculated by comparing the emissions of an obliged person's fuels (liquid fossil and biofuels) against the hypothetical emissions had all its fuels been fully liquid fossil.

Subpart 2 provides for flexibility measures, namely that obliged persons will be able to—

- bank excess reductions for the next year:
- borrow up to 10% of the required emissions intensity reduction from the next year:
- increase the percentage of emissions reduction that can be borrowed by 20% or less, if approved by the Minister on application:
- trade excess reductions between each other, to meet their obligation in the same year.

In addition, *Schedule 1* contains a fourth flexibility measure, namely that obliged persons will be able to partially or fully defer their obligation for the first 2 years of the obligation with permission from the Minister, in which case an emissions penalty of 0.1% would be applied for each year that the deferral is taken up.

Part 3

Administration and enforcement

Subpart 1 facilitates the enforcement of the Bill.

Subpart 2 requires the High Court to impose a pecuniary penalty on an obliged person for a contravention of the biofuel obligation. Proceedings under this subpart are civil proceedings. The pecuniary penalty is \$800 per tonne of carbon dioxide equivalent emissions that result, or are likely to result, from the contravention. *See also Sched-*

ule 1, where the penalty is instead \$300 per tonne of carbon dioxide equivalent emissions in the first year of the obligation.

Subpart 3 provides for regulations contemplated by the Bill and incidental matters.

Schedule 1 is for transitional and savings provisions.

Schedule 2 sets out the emissions intensity reduction percentages.

Schedule 3 provides that the Act will be an environmental Act for the purposes of the Environmental Protection Authority Act 2011 (the **EPA Act**). Some of the effects of this are as follows:

- section 4 of the EPA Act provides that, in order to recognise and respect the Crown's responsibility to take appropriate account of the Treaty of Waitangi/te Tiriti o Waitangi, section 18 establishes the Māori Advisory Committee to advise the Environmental Protection Authority (the **EPA**) on policy, process, and decisions of the EPA under an environmental Act, and the EPA must comply with the requirements of an environmental Act in relation to the Treaty/te Tiriti when exercising powers or performing functions under that Act:
- section 12(2) of the EPA Act provides that when undertaking its particular functions under an environmental Act, the EPA must also act in a way that furthers any objectives (or purposes) stated in respect of that Act, in this case, reducing greenhouse gas emissions by increasing the supply and use of sustainable biofuels for transport purposes:
- under section 13 of the EPA Act, the EPA will have the functions of advising the Minister for the Environment on relevant matters and, on the request of that Minister, providing technical advice to the Government, etc:
- section 16 of the EPA Act limits how the EPA may delegate functions or powers.

Hon Dr Megan Woods

Sustainable Biofuel Obligation Bill

Government Bill

Contents

		Page
1	Title	3
2	Commencement	3
Part 1		
Preliminary provisions		
3	Purpose of this Act	3
4	Outline of this Act	3
5	Interpretation	3
6	Transitional, savings, and related provisions	5
7	Act binds the Crown	5
Part 2		
Biofuel obligation		
Subpart 1—Imposition of biofuel obligation		
<i>Application</i>		
8	Persons to whom this Act applies	5
9	Fuel on which biofuel obligation is based	5
<i>Biofuel obligation</i>		
10	Biofuel obligation	6
<i>Emissions intensity reduction percentages</i>		
11	Emissions intensity reduction percentages	7
12	Alteration of emissions intensity reduction percentages for 2026 onwards	8
<i>Sustainable biofuels</i>		
13	Regulations declaring what are sustainable biofuels	8

Sustainable Biofuel Obligation Bill

14	Regulations made under section 13(1) : additional matters	9
15	Certification schemes	9
	Subpart 2—Flexibility measures	
16	Obligated persons may bank or trade excess reductions	10
17	Obligated persons may borrow reductions	10
18	Minister may approve increase in reduction borrowed to 20% or less	10
19	Provisions applying to all flexibility measures	11
	Part 3	
	Administration and enforcement	
	Subpart 1—Administration	
20	Functions of EPA under this Act	11
21	Obligated persons must keep and retain records	12
22	Obligated persons must provide administrative information to EPA	12
23	Obligated persons must provide annual reports	12
24	EPA must publish certain information	13
25	Offence for failure to provide information or documents when required	14
26	Knowingly providing false or misleading information	14
27	Application of certain provisions of Climate Change Response Act 2002	14
28	Sharing information	15
29	Obligation to maintain confidentiality	15
	Subpart 2—Civil pecuniary penalties	
30	Civil pecuniary penalty order for contravening biofuel obligation	16
31	Strict liability	16
32	Defences	16
33	Amount of pecuniary penalty	17
34	Considerations for court in reducing civil pecuniary penalty	17
35	Court must order that recovery from civil pecuniary penalty be applied to EPA’s actual costs	17
36	Rules of civil procedure and civil standard of proof apply	17
37	Limitation	17
38	EPA may accept undertakings	18
	Subpart 3—Regulations and consequential amendments	
39	Obligated person must provide other information	18
40	Form, manner, and content of information	18
41	Regulations	19
42	Consequential amendment to other enactment	19
	Schedule 1	20
	Transitional, savings, and related provisions	

Schedule 2	22
Emissions intensity reduction percentages	
Schedule 3	23
Consequential amendment to other enactment	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sustainable Biofuel Obligation Act **2022**.

2 Commencement

This Act comes into force on **1 April 2024**.

5

Part 1
Preliminary provisions

3 Purpose of this Act

The purpose of this Act is to provide for an obligation to reduce greenhouse gas emissions by increasing the supply and use of sustainable biofuels for transport purposes. 10

4 Outline of this Act

This Act—

- (a) requires an obliged person to reduce emissions from their use of liquid fossil fuels by including a certain amount of sustainable biofuel in that fuel in accordance with annual emissions intensity reduction percentages set out in the Act; and 15
- (b) provides for investigation, monitoring, and enforcement of that biofuel obligation by the EPA.

5 Interpretation

20

In this Act, unless the context otherwise requires,—

biofuel means any gaseous or liquid fuel produced from biomass that can be used as a fuel for engines

biofuel obligation means the obligation in **section 10** and any regulations made for the purpose of that section 25

biofuel obligation fuel has the meaning given in **section 9**

carbon dioxide equivalent has the same meaning as in section 4(1) of the Climate Change Response Act 2002

emissions means emissions of greenhouse gases

- emissions intensity** is the amount of emissions (in kilograms of carbon dioxide equivalent emissions) per megajoule of energy from a fuel
- emissions intensity reduction percentage**, or **percentage**, in relation to a year, means the percentage that applies to that year as set out in **Schedule 2**
- EPA** means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011 5
- ETS obligation fuel**, in relation to an obliged person and a year, means fuel—
- (a) in respect of which that person is a participant in that year, within the meaning of Part 2 of Schedule 3 of the Climate Change Response Act 2002 (which relates to the activity of owning liquid fossil fuels); and 10
 - (b) of a type that is prescribed by regulations under that Act as an obligation fuel for the purposes of that activity
- exempt fuel** means fuel that is exempt under **section 9(2)** from being counted as biofuel obligation fuel
- flexibility measures** means the measures described in **subpart 2 of Part 2** and **clause 2 of Schedule 1** (deferrals during first 2 years) 15
- greenhouse gas** has the same meaning as in section 4(1) of the Climate Change Response Act 2002
- life-cycle emissions**, in relation to any fuel, means the emissions from all stages of its life, including cultivation, production, transport, and use 20
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- obliged person** has the meaning given in **section 8**
- prescribed certification scheme** means a scheme that is prescribed by regulations for the purpose of **section 15** 25
- refinery** means, in relation to biofuel, the place where that biofuel is produced
- regulations** means regulations made under **section 41**
- removed for home consumption** means removed for home consumption in accordance with the Customs and Excise Act 2018 30
- sustainable biofuel** means a biofuel (however described) that is prescribed as sustainable biofuel by regulations made under **section 13**
- tariff** has the same meaning as in section 2 of the Tariff Act 1988
- year** means a calendar year
- waste hierarchy** means the ranking of waste management options from the most effective to least effective, according to what is best for the environment. 35

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

7 Act binds the Crown

This Act binds the Crown.

5

Part 2

Biofuel obligation

Subpart 1—Imposition of biofuel obligation

Application

8 Persons to whom this Act applies

10

This Act applies to every person (an **obliged person**) who is a participant within the meaning of section 54(1)(a) of the Climate Change Response Act 2002 in respect of the activity listed in Part 2 of Schedule 3 of that Act (which relates to owning ETS obligation fuel).

9 Fuel on which biofuel obligation is based

15

- (1) In this Act, an obliged person's **biofuel obligation fuel**, in relation to a year, is calculated as follows:

$$\text{biofuel obligation fuel} = a + b - c$$

where—

- a is the volume of all ETS obligation fuel that they removed for home consumption or otherwise removed from a refinery, during the year 20
- b is the volume of all biofuels that they removed for home consumption or otherwise removed from a refinery, other than for export, during the year
- c is the volume of their exempt fuel.

(2) Exempt fuel means—

25

- (a) aviation spirit and spirit type jet fuel (as specified from time to time in chapter 27 of the Tariff, and kerosene type jet fuel, as specified from time to time in chapter 27 of the Tariff, or a blend of that fuel):
- (b) ETS obligation fuel sold by the obliged person or a third party for use on a maritime trip (other than a fishing trip) where the sale is zero-rated under the Goods and Services Tax Act 1985: 30
- (c) the volume of the ETS obligation fuel exported where the related sale is zero-rated under the Goods and Services Tax Act 1985 less the volume of biofuels in that fuel—

- (i) whether or not the fuel was previously removed for home consumption; and
- (ii) other than in the circumstances set out in **paragraph (a) or (b)**:
- (d) ETS obligation fuel that is identified in the regulations, or estimated under a methodology set in the regulations, as exempt fuel. 5
- (3) The Minister must not recommend the making of regulations for the purpose of **subsection (2)(d)** unless the Minister is satisfied that 1 or both of the following apply:
 - (a) the fuel is intended to be used outside New Zealand’s territorial waters:
 - (b) the fuel is not intended to be used for transport purposes (for example, fuel used to generate heat for industrial processes or electricity). 10

Biofuel obligation

10 Biofuel obligation

- (1) Each obliged person must, each year, reduce the emissions intensity of their biofuel obligation fuel by at least the emissions intensity reduction percentage that applies to that year by ensuring that the required amounts of sustainable biofuels are removed for home consumption or otherwise removed from a refinery, other than for export, in that year. 15
- (2) An obliged person meets their obligation under **subsection (1)** if—

$$[(f - s) \div f] \times 100 \geq r$$
 20

where—

 - f is the emissions (in tonnes of carbon dioxide equivalent) from their biofuel obligation fuel, calculated as if all of that fuel were liquid fossil fuels
 - s is the emissions (in tonnes of carbon dioxide equivalent) from their biofuel obligation fuel 25
 - r is the emissions intensity reduction percentage.
- (3) The values of variables f and s must be determined in accordance with any further methodologies provided for in the regulations.
- (4) When calculating the emissions,— 30
 - (a) the total energy value (in megajoules) of the fuel energy supplied, including from biofuels, must be equivalent to the total energy value as if all of the fuels were assumed to be liquid fossil fuels; and
 - (b) emissions must be calculated on the basis of life-cycle emissions.
- (5) The regulations may provide for the calculation of the matters required by this section, including the following, or methodologies for calculating the following: 35
 - (a) life-cycle emissions intensity value for each type of fuel:

- (b) energy content for each type of fuel:
 - (c) assessment of life-cycle emissions.
- (6) This section is subject to **sections 16 to 18**.

Emissions intensity reduction percentages

- 11 Emissions intensity reduction percentages** 5
- (1) The emissions intensity reduction percentages that will apply to each year are set out in **Schedule 2**.
- (2) The Minister must in 2024 and 2029, and may at any other time, review all or any of the emissions intensity reduction percentages for any year or years starting with the year 2026. 10
- (3) In conducting the review, the Minister must—
- (a) consult any persons that the Minister considers appropriate; and
 - (b) have regard to the following considerations, to the extent that they appear to the Minister to be relevant:
 - (i) the extent to which the percentages that will apply to each year are consistent with the scale of emissions intensity reductions needed from domestic transport (excluding aviation) to achieve the 2050 emissions reduction target set in section 5Q of the Climate Change Response Act 2002 and the emissions budgets (within the meaning of section 4 of that Act) for 2026 to 2030 and 2031 to 2035: 15 20
 - (ii) the extent to which the percentages that will apply to each year help to facilitate the supply of advanced biofuels into the New Zealand market and support domestic production:
 - (iii) the extent to which the volume of biofuels needed to meet the percentages can be sourced without the sustainability criteria being breached: 25
 - (iv) the extent to which the percentages' trajectory allows fuel suppliers and domestic biofuel producers a reasonable period of time in which to have the necessary biofuels infrastructure in place: 30
 - (v) the extent to which any likely increase in fuel prices as a result of the percentages can be absorbed by the New Zealand economy without undue detriment to economic activity:
 - (vi) the extent to which measures are in place to address any distributional impacts arising from fuel price rises: 35
 - (vii) the extent to which the percentages recognise the limits of New Zealand's light and heavy road vehicle fleets in the use of conventional biofuels, taking into account the limit to the amount of particular biofuels that can be blended with liquid fossil fuels.

12 Alteration of emissions intensity reduction percentages for 2026 onwards

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, alter 1 or more of the emissions intensity reduction percentages that will apply to 2026, or any later year commencing after the regulations are made, by amending **Schedule 2**. 5
- (2) The Minister must not make a recommendation unless the Minister has conducted a review in accordance with **section 11**.
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Sustainable biofuels 10**13 Regulations declaring what are sustainable biofuels**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, prescribe which biofuels are sustainable biofuels.
- (2) Before recommending regulations under **subsection (1)**,—
- (a) the Minister must be satisfied that any activities that are associated with the cultivation, production, and processing of feedstocks (that is, the biomass that is used to make a biofuel to be prescribed as a sustainable biofuel)—
- (i) are not likely to have a significant adverse effect on biodiversity: 15
- (ii) are not likely to lead to the deforestation of forests native to the country where they grow or canopy forests or the destruction of wetlands or peatland: 20
- (iii) are not likely to have a significant adverse effect on food and feed security:
- (iv) are not likely to have a significant adverse effect on water quality or significantly restrict the availability of water in an area: 25
- (v) are not likely to be associated with a high risk of indirect land use change; and
- (b) the Minister must have regard to—
- (i) the impacts on soil carbon of any activities that are associated with the cultivation, production, and processing of feedstocks: 30
- (ii) the principles of the waste hierarchy (*see* **section 5**).
- (3) The criteria set out in **subsection (2)(a) and (b)** apply equally regardless of the extent to which those biofuels or the feedstocks from which they are sourced, as the case requires, are cultivated, produced, or processed in New Zealand or outside New Zealand. 35

- (4) However, in making a recommendation under **subsection (1)**, the Minister is not required to consider the criteria in **subsection (2)(a) and (b)** in relation to—
- (a) feedstock that is a class of waste or residue product that is specified in the regulations as waste or residue product to which this paragraph applies; or 5
 - (b) biofuels made from feedstock that is a class of waste or residue product to which **paragraph (a)** applies.
- (5) The lifecycle of feedstocks referred to in **subsection (3)** may be excluded, in whole or in part by regulations under **subsection (1)**, from an assessment of the emissions intensity of biofuels made from those feedstocks. 10
- (6) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 14 Regulations made under section 13(1): additional matters**
- Regulations made under **section 13(1)** may— 15
- (a) provide for whether a biofuel is a sustainable biofuel to be determined by reference to specified criteria, methodologies, standards, and certification requirements; and
 - (b) place limits on the extent to which an obliged person may meet their biofuel obligation by means of particular types of biofuels or impose prohibitions on the use of particular types of biofuels, or both. 20
- 15 Certification schemes**
- (1) Each obliged person must ensure that the biofuels that are used to meet their biofuel obligation comply with the conditions of the prescribed certification scheme (if any). 25
- (2) Regulations made under **section 13(1)** may provide for a certification scheme, including (without limitation)—
- (a) the manner of certification:
 - (b) the application of the certification requirements to sustainable biofuel or feedstocks, or to emissions intensity: 30
 - (c) who may act as a certifier.
- (3) The Minister must not recommend the making of regulations establishing a certification scheme unless the Minister is satisfied that—
- (a) the scheme has adequate governance and auditing and risk management procedures to ensure that a certifier acts properly; and 35
 - (b) the scheme will contain adequate safeguards to ensure that persons appointed as certifiers have suitable qualifications and training.

Subpart 2—Flexibility measures

16 Obligated persons may bank or trade excess reductions

- (1) This section applies if an obliged person (**A**) reduces the emissions intensity of their biofuel obligation fuel in a year by more than the emissions intensity reduction percentage for that year. 5
- (2) Up to 100% of the excess reduction may, if notified to the EPA in the prescribed manner,—
- (a) be carried forward to the next year (**banked**); or
 - (b) be transferred to another obliged person (**B**) (**traded**).
- (3) Banking provides that A's biofuel obligation for the next year will be reduced by the amount banked. 10
- (4) Trading allows B's biofuel obligation for the current year only to be reduced by the amount traded.
- (5) An obliged person may bank part of the excess reduction and trade another part of the excess reduction as set out in the notification, but may not both bank and trade the same part. 15

Compare: 2002 No 40 s 5ZF(1), (2)

17 Obligated persons may borrow reductions

- (1) This section applies if an obliged person reduces the emissions intensity of their biofuel obligation fuel in a year by less than the emissions intensity reduction percentage for that year. 20
- (2) If this section applies, 10% or less of the reduction in emissions that should have been made may, if notified to the EPA in the prescribed manner, be carried forward and added to the person's biofuel obligation for the next year (**borrowed**). 25

Compare: 2002 No 40 s 5ZF(3), (4)

18 Minister may approve increase in reduction borrowed to 20% or less

- (1) The Minister may, on application by an obliged person to further reduce the 10% reduction in emissions to the person's biofuel obligation for the current year permitted by **section 17(2)**, determine that the obliged person may act as if the figure of 10% in **section 17(2)** were replaced by the figure of 20% or a lesser figure specified by the Minister. 30
- (2) An application or determination under **subsection (1)** must,—
- (a) in the case of a determination, be notified in the *Gazette*; and
 - (b) in the case of both an application and a determination, be notified to the EPA. 35
- (3) When considering an application under **subsection (1)**, the Minister must have regard to the following:

- (a) whether the applicant has made a reasonable attempt to comply with their biofuel obligation for that year:
 - (b) whether the provisions of **section 17** are insufficient to meet the needs of the applicant because of unforeseen circumstances (for example, delayed shipments or other supply chain constraints): 5
 - (c) whether the applicant is likely to be able to meet the increased level of obligation in the following year resulting from the carrying forward of the amount of increase permitted in 1 year into the obligation of that person for the following year:
 - (d) any other matters the Minister considers relevant. 10
- (4) An application under **subsection (1)** must be made in the prescribed manner (if any).

19 Provisions applying to all flexibility measures

- (1) This section applies in respect of amounts banked, borrowed, or traded, including anything done in reliance on **Schedule 1**, and, in particular, **clause 2** of that schedule. 15
- (2) Amounts banked, traded, or borrowed must be calculated as tonnes of carbon dioxide equivalent emissions.
- (3) Amounts banked or borrowed in a year must be carried forward to another year as an amount of the biofuel obligation for the year (calculated as tonnes of carbon dioxide equivalent emissions) and not as a percentage by which the obliged person overachieved or underachieved the emissions intensity reduction percentage for the year. 20
- (4) The regulations may provide further rules applying to the flexibility measures.

Part 3 25

Administration and enforcement

Subpart 1—Administration

20 Functions of EPA under this Act

The functions of the EPA under this Act are—

- (a) to receive and collate the information provided by obliged persons under this Act; and 30
- (b) to monitor compliance with, and take any action that may be appropriate to enforce, this Act and the regulations; and
- (c) to publish information in accordance with **section 24**.

Compare: 2002 No 40 s 87 35

- 21 Obligated persons must keep and retain records**
- (1) Each obliged person must keep records of the information to which **sections 22 to 24** apply.
- (2) Each obliged person must continue to retain a copy of those records for a period of 10 years after the expiry of the year to which they relate. 5
- (3) An obliged person commits an offence if the person, without reasonable excuse, fails to comply with **subsection (1) or (2)**.
- (4) An obliged person who is convicted of an offence against **subsection (3)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$15,000: 10
- (b) in any other case, to a fine not exceeding \$75,000.
- Compare: 1998 No 110 s 195
- 22 Obligated persons must provide administrative information to EPA**
- (1) Each obliged person must provide to the EPA—
- (a) the following information about the obliged person within 20 working days after the person becomes an obliged person: 15
- (i) their name and physical address for service in New Zealand:
- (ii) any prescribed identifying information and any prescribed contact details:
- (b) any change in information previously provided to the EPA (for example, changes in contact details and corrections to information in the annual report), as soon as practicable after the person becomes aware of the change. 20
- (2) An obliged person commits an offence against this Act if the person, without reasonable excuse, fails to comply with **subsection (1)**. 25
- (3) An obliged person who is convicted of an offence against **subsection (2)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000:
- (b) in any other case, to a fine not exceeding \$25,000.
- 23 Obligated persons must provide annual reports** 30
- (1) Within 4 months after the end of each year, each obliged person must provide to the EPA (in the prescribed manner, if any) an annual report, which must include the information in **subsection (2)** in respect of the year.
- (2) The information is—
- (a) their biofuel obligation fuel: 35
- (b) the extent to which the person met their biofuel obligation and how that was calculated:

- (c) the extent to which, and how, the person made use of the flexibility measures:
 - (d) a statutory declaration that complies with **subsection (3)**:
 - (e) any other information prescribed by the regulations.
- (3) The statutory declaration must be given by an auditor who is approved by the EPA (in the prescribed manner, if any, for that purpose) and must— 5
- (a) certify that the contents of the annual report have been independently assessed for accuracy; and
 - (b) be made in accordance with the regulations.
- (4) An obliged person commits an offence if the person, without reasonable excuse, fails to comply with **subsection (1) or (3)**. 10
- (5) An obliged person who is convicted of an offence against **subsection (4)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$15,000:
 - (b) in any other case, to a fine not exceeding \$75,000. 15

24 EPA must publish certain information

- (1) The EPA must publish the following information in respect of each year:
- (a) the emissions intensity reductions reported in all annual reports provided to the EPA in respect of that year:
 - (b) a summary, in the prescribed form (if any), of the prescribed information provided in each of those annual reports: 20
 - (c) information about each civil pecuniary penalty imposed under **subpart 2** during the year and each civil pecuniary penalty so imposed during a previous year that has any amount still owing at any time in that year: 25
 - (d) any other information prescribed by the regulations.
- (2) The information required under **subsection (1)(c)** for each of those penalties is—
- (a) the name of the person on whom the penalty was imposed; and
 - (b) the section of **subpart 2** under which the penalty was imposed; and 30
 - (c) the amount of the penalty; and
 - (d) the date on which the last payment for the penalty was due and, if the penalty has been paid in full, the date on which it was paid in full.
- (3) The EPA must publish the information in whatever manner and format that the EPA considers appropriate. 35

Compare: 2002 No 40 ss 89, 89A

25 Offence for failure to provide information or documents when required

- (1) A person commits an offence if the person, without reasonable excuse,—
- (a) fails to provide information to the EPA or an enforcement officer when required to do so under this subpart; or
 - (b) fails to appear before the EPA or an enforcement officer, or fails to produce any document or documents, when required to do so under this subpart. 5
- (2) Every person who is convicted of an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$15,000; or 10
 - (b) in any other case, to a fine not exceeding \$75,000.
- (3) This section does not apply to information to which **section 21** applies.
Compare: 2002 No 40 s 131

26 Knowingly providing false or misleading information

- Every person who knowingly provides false or misleading information to the EPA commits an offence and is liable on conviction to a fine not exceeding,— 15
- (a) in the case of an individual, \$100,000;
 - (b) in any other case, \$500,000.

Compare: 2002 No 40 s 30K

27 Application of certain provisions of Climate Change Response Act 2002 20

- (1) The following provisions of the Climate Change Response Act 2002 apply for the purposes of this Act:
- (a) section 90 (EPA may prescribe form of certain documents):
 - (b) section 93 (appointment of enforcement officers):
 - (c) sections 94 to 98 (which relate to the power to require information and inquiries) as if there were no references to the chief executive: 25
 - (d) section 100(1) to (7) (power of entry for investigation):
 - (e) section 101 (applications for warrants) as if the references in that section to evidence of the commission of an offence under section 129, 132, or 133 were references to evidence of a contravention of this Act: 30
 - (f) section 102 (proof of authority must be produced):
 - (g) section 103 (notice of entry):
 - (h) section 104 (information obtained under section 100 or 101 only admissible in proceedings for alleged breach of obligations imposed under ETS participant provisions): 35
 - (i) section 105 (return of items seized):
 - (j) section 106 (protection of persons acting under authority of this Part):

- (k) section 139 (liability of body corporate):
- (l) section 141 (liability of companies and persons for actions of director, agent, or employee):
- (m) section 143 (evidence in proceedings), which applies as if the reference to proceedings for an offence were a reference to proceedings for an offence or a civil pecuniary penalty. 5
- (2) Those provisions apply as if this Act were part of the ETS participant provisions (as that term is defined in section 4(1) of the Climate Change Response Act 2002) and with necessary modifications.
- 28 Sharing information** 10
- The chief executive of the New Zealand Customs Service must provide information to any member or employee of the EPA if the information—
- (a) is requested by any member or employee of the EPA; and
- (b) is required by any member or employee of the EPA to assist them to carry out their functions under this Act. 15
- Compare: 2002 No 40 s 149
- 29 Obligation to maintain confidentiality**
- (1) This section applies—
- (a) to the chief executive of the EPA, the EPA, an enforcement officer, and any other person who performs functions or exercises powers of the chief executive, the EPA, or an enforcement officer under this Act; and 20
- (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 Act; and 25
- (b) must 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 30
- (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 Act or for the administration of this Act; or
- (iv) for the purposes of, or in connection with, reporting requirements of the Public Finance Act 1989; or 35
- (v) as provided under this Act or any other Act; or

- (vi) 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 a civil pecuniary penalty under this Act or any other Act.
- (3) Nothing in **subsection (2)** may be treated as prohibiting the chief executive of the EPA or the EPA from— 5
- (a) providing or publishing general guidance in relation to the operation of this Act; or
- (b) preparing and supplying statistical information to any person in a form that does not identify any individual. 10

Compare: 2002 No 40 s 99

Subpart 2—Civil pecuniary penalties

30 Civil pecuniary penalty order for contravening biofuel obligation

The High Court must, on the application of the EPA, order an obliged person to pay a civil pecuniary penalty, as calculated under **section 33**, to the Crown if the court is satisfied that the obliged person has contravened their biofuel obligation. 15

31 Strict liability

In a proceeding under this subpart against a person for a contravention by that person, it is not necessary to prove the person's— 20

- (a) intention; or
- (b) knowledge; or
- (c) recklessness; or
- (d) negligence.

32 Defences 25

- (1) In a proceeding under this subpart against a person (A) for a contravention of the biofuel obligation, it is a defence if A proves that—
- (a) A's contravention was due to reasonable reliance on information supplied by another person; or
- (b) both of the following apply: 30
- (i) A's contravention was due to the act or default of another person, or to an accident or to some other cause beyond A's control; and
- (ii) A took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) In **subsection (1)**, **another person** does not include a director, an employee, or an agent of A. 35

- (3) A is not, without the leave of the court, entitled to rely on the defence that the contravention was due to reasonable reliance on information supplied by another person, or that the contravention was due to the act or default of another person, unless A has, not later than 7 days before the date on which the hearing of the proceeding commences, served on the other party to the proceeding a written notice identifying that person. 5
- 33 Amount of pecuniary penalty**
- (1) The civil pecuniary penalty is \$800 per tonne of carbon dioxide equivalent emissions that result, or are likely to result, from the contravention.
- (2) However, the court may reduce the civil pecuniary penalty (including to zero) after having regard to all relevant matters in **section 34**. 10
- 34 Considerations for court in reducing civil pecuniary penalty**
- In determining any reduction of the civil pecuniary penalty, the court must have regard to all relevant matters, including—
- (a) the nature and extent of the contravention; and 15
- (b) any financial gains made or financial losses avoided by the person in contravention; and
- (c) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence); and 20
- (d) whether the person in contravention has previously been found by the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct.
- 35 Court must order that recovery from civil pecuniary penalty be applied to EPA's actual costs** 25
- If the court orders that a person pay a civil pecuniary penalty, the court must also order that the penalty must be applied first to pay the EPA's actual costs in bringing the proceeding.
- 36 Rules of civil procedure and civil standard of proof apply**
- A proceeding under this subpart is a civil proceeding, and the rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof). 30
- 37 Limitation**
- (1) A proceeding under this subpart may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered. 35
- (2) However, no proceeding under this subpart may be commenced 10 years or more after the matter giving rise to the contravention.

- (3) Section 48(1) and (3) of the Limitation Act 2010 (which relates to fraud) applies with all necessary modifications to the 10-year period referred to in **subsection (2)** as if it were a longstop period.
- (4) In this subpart **contravention** includes a breach of a term of an undertaking given to the EPA under **section 38**. 5
- 38 EPA may accept undertakings**
- (1) The EPA may accept a written undertaking given by, or on behalf of, an obliged person to pay to the EPA an amount in lieu of a civil pecuniary penalty in connection with any matter relating to the enforcement of this Act.
- (2) The person may withdraw or vary the undertaking with the consent of the EPA. 10
- (3) If an undertaking is given, the EPA must—
- (a) ensure that each amount is paid into a Crown Bank Account (after deducting the EPA’s actual costs incurred in connection with the matter):
 - (b) give notice of that undertaking on its Internet site, including—
 - (i) a statement of the amount that the person has undertaken to pay; 15
 - and
 - (ii) a brief description of the circumstances and nature of the alleged contravention to which the undertaking relates.
- (4) If the EPA considers that a person who has given an undertaking under this section has breached a term of that undertaking, the EPA may apply to the High Court for a civil pecuniary penalty order under this subpart. 20

Compare: 2011 No 5 ss 46–47

Subpart 3—Regulations and consequential amendments

- 39 Obligated person must provide other information**
- An obliged person must give to the EPA any information required by the regulations. 25
- 40 Form, manner, and content of information**
- If this Act requires a person to give a document or other information to the EPA, the document or other information must—
- (a) include, or be accompanied by, any documents or information required by the regulations; and 30
 - (b) be in the form and manner required by the regulations; and
 - (c) be given to the EPA by the method or in the manner (including electronically) required by the regulations.

41 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) prescribing exempt fuel for the purposes of **section 9(2)(d)**:
 - (b) altering emissions intensity reduction percentages for the purpose of **section 12**: 5
 - (c) prescribing what biofuels are sustainable biofuels for the purpose of **section 13(1)**:
 - (d) prescribing other matters for the purpose of **section 13(1)**:
 - (e) providing for anything else that this Act says may or must be provided for by regulations: 10
 - (f) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Before recommending the making of any regulations for the purposes of **section 24(1)(b) and (d)** the Minister must have regard to the commercial sensitivity of the information that may be the subject of those regulations. 15
- (3) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- Compare: 2002 No 40 s 168(1)(k), (l), (2)

42 Consequential amendment to other enactment

20

Amend the enactment specified in **Schedule 3** as set out in that schedule.

Schedule 1

Transitional, savings, and related provisions

s 6

Part 1

Provisions relating to this Act as enacted

5

1 Interpretation of this Part

In this Part, unless the context otherwise requires,—

required reduction, in relation to an obliged person, is the minimum sum of f – s (as those terms are defined in **section 10(2)**) required to meet the emissions intensity reduction percentage for any year

10

year 1 means the period beginning on the commencement of this Act and ending on 31 December in the same year

year 2 means the calendar year that starts on 1 January 2025

year 3 means the calendar year that starts on 1 January 2026.

2 Deferring obligation in first 2 years

15

(1) An obliged person may apply in writing to the Minister for a deferral of the whole or any part of that person’s biofuel obligation for either or both of the following years, as follows:

(a) year 1 until year 2:

(b) year 2 (which may include the required reduction for year 1) until year 3.

20

(2) An application—

(a) under **subclause (1)(a)** may be made at any time from the beginning of year 1 until 20 working days after the end of year 1; and

(b) under **subclause (1)(b)** may be made at any time from the beginning of year 2 until 20 working days after the end of year 2.

25

(3) An obliged person who makes an application under **subclause (1)** must give a copy of the application to the EPA.

(4) The Minister must have regard to the following before deciding whether to grant or reject an application:

(a) the reasons for the application for deferral:

30

(b) whether the obliged person has made all reasonable efforts to comply with the biofuel obligation.

(5) The Minister may grant or reject an application by notice in the *Gazette* and must make reasonable efforts to do so within 30 working days of receiving the application.

35

(6) If an applicant is granted deferral for year 1 until year 2, the applicant must—

-
- (a) add to year 2's required reductions both of the following:
- (i) the amount deferred from year 1; and
 - (ii) 0.1% of year 1's required reduction; and
- (b) subtract from year 1's required reduction the amount deferred.
- (7) If an applicant is granted deferral for year 2 until year 3, the applicant must— 5
- (a) add to year 3's required reduction both of the following:
- (i) the amount deferred from year 2; and
 - (ii) 0.1% of year 2's required reduction; and
- (b) subtract from year 2's required reduction the amount deferred.
- (8) All calculations made under **subclauses (1), (6), and (7)** are to be made on 10
the basis of tonnes of carbon dioxide equivalent emissions.

Compare: 1989 No 140 s 34Q (repealed); 2008 No 60 s 9

Schedule 2
Emissions intensity reduction percentages

Year	ss 5, 11 Emissions intensity reduction percentages
2024	2.4%
2025	3.5%
2026	3.8%
2027	4.1%
2028	4.4%
2029	4.7%
2030	5.0%
2031	5.8%
2032	6.6%
2033	7.4%
2034	8.2%
2035	9.0%

Schedule 3
Consequential amendment to other enactment

s 42

Environmental Protection Authority Act 2011 (2011 No 14)

In section 5, definition of **environmental Act**, after paragraph (e), insert:

5

- (f) the Sustainable Biofuel Obligation Act **2022**