



## Carbon Offsetting and Reduction Scheme for International Aviation - Proposed Legislative Vehicle

<b>Reason for this briefing</b>	To provide you with information on a second legislative vehicle that could be used to implement the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).
<b>Action required</b>	Consider the content of this briefing and advise officials of your preferred legislative vehicle for CORSIA.
<b>Deadline</b>	Monday 10 June 2019.
<b>Reason for deadline</b>	To enable respective changes to be made to the proposed Cabinet paper seeking approval for CORSIA legislation drafting to commence.

### Contact for telephone discussion (if required)

Name	Position	Telephone	First contact
Glen-Marie Burns	Manager, Urban Development and Environment	[REDACTED]	✓
[REDACTED]	Senior Adviser, Urban Development and Environment	[REDACTED]	

### MINISTER'S COMMENTS:

Withheld to protect the privacy of natural persons

<b>Date:</b>	31 May 2019	<b>Briefing number:</b>	OC190472
<b>Attention:</b>	Hon Julie Anne Genter Associate Minister of Transport  Cc: Hon Phil Twyford Minister of Transport	<b>Security level:</b>	In confidence

### Minister of Transport's office actions

- Noted*
 *Seen*
 *Approved*  
 *Needs change*
 *Referred to*  
 *Withdrawn*
 *Not seen by Minister*
 *Overtaken by events*

## Purpose of report

1. To provide you with information on a second legislative vehicle that could be used to implement the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA), and seek your confirmation on which of the two legislative vehicles you prefer.

## Background and context

2. The CORSA is a global market-based measure to reduce and offset international aviation emissions from 2021. In October 2016, the International Civil Aviation Organization agreed to introduce CORSA and New Zealand agreed to participate in the scheme. New Zealand now needs to implement CORSA within domestic legislation.

3. In June 2018, we provided you with a briefing on a proposed legislative vehicle for the CORSA (OC180315 refers). We recommended that bespoke legislation should be drafted for CORSA primarily because, amongst other things, CORSA did not align neatly with existing legislation. You agreed to that recommendation.

4. Following your agreement, you made a 2019 legislative bid through Minister Twyford for a Climate Change Response (Transport Emissions) Bill (the Transport Emissions Bill). The Transport Emissions Bill would accommodate [REDACTED]

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due to active  
consideration

5. The Transport Emissions Bill has a priority of category 4 within the legislative programme, which means that it is expected to be referred to a Select Committee within the 2019 calendar year.

### *Alternatives to bespoke legislation were previously considered*

6. The Climate Change Response Act 2002 and the Civil Aviation Act 1990 were both previously considered as possible legislative vehicles for CORSA.
7. Following discussions with the Ministry for the Environment, we agreed that bespoke legislation would be more suitable as this would avoid over-complicating the Climate Change Response Act 2002, which is already a complex piece of legislation.
8. The Civil Aviation Act 1990 was also dismissed at that time because its purpose did not contemplate climate change or broader environmental matters, and the implementation of an emissions trading scheme (for international aviation) was not a good fit for a civil aviation regulatory statute.

### **A new Civil Aviation Bill could now accommodate CORSA**

9. A new Civil Aviation Bill (the Bill) has been largely drafted, and an exposure version is out for public consultation. The Bill will replace the Civil Aviation Act 1990 and the Airport Authorities Act 1966 with a single new statute that includes a number of proposals to improve the safety, security, and efficiency of New Zealand's civil aviation system.
10. Along with the main purpose of facilitating the operation of a safe and secure civil aviation system, the Bill has the following additional purposes, which are sufficiently broad in scope to allow CORSA to be included within the Bill:
  - a) to contribute to achieving an accessible, safe, sustainable, resilient, and productive transport system;
  - b) to facilitate the development of civil aviation;

- c) to ensure that New Zealand’s obligations under international civil aviation conventions, agreements, and understandings are implemented;
- d) to preserve New Zealand’s national security and national interests; and
- e) to protect the interests of people and the environment that are affected by civil aviation.

11. The Civil Aviation Bill also has a priority category 4 and is expected to be referred to a Select Committee in 2019.

**Comparing the two possible legislative approaches**

12. The table below sets out a comparison of both legislative approaches for CORSIA. The key difference is that the Civil Aviation Bill is considerably more advanced in terms of the process, and is currently out for public consultation through an exposure draft.

	<b>Climate Change Response (Transport Emissions) Bill</b> (bespoke legislation)	<b>Civil Aviation Amendment Bill</b> (legislation to replace the Civil Aviation Act 1990 and Airport Authorities Act 1966)
<b>Timing</b>  Withheld due to active consideration	<p>[Redacted]</p> <p>Introduction of the Transport Emissions Bill to the House of Representatives would be dependent on the drafting for [Redacted]</p> <p>[Redacted]</p>	A draft exposure document is currently out for public consultation, and the Bill has largely been drafted.
<b>Legislative framework</b>  Withheld due to active consideration	<p>The legislation would need to be drafted from scratch.</p> <p>Offence and penalty provisions would need to be developed, and could be based on provisions in the Climate Change Response Act (as appropriate).</p> <p>Smaller, bespoke legislation might progress faster through parliamentary processes. However, given the high interest in climate change issues, these are likely going to take longer to progress through parliamentary processes.</p> <p>[Redacted]</p>	<p>The additional purposes of the Bill provide scope for the inclusion of CORSIA.</p> <p>Offences and penalties in the Bill will not be a perfect fit for CORSIA, but they could be amended or used as a base to apply to CORSIA.</p> <p>There are merits in having all relevant aviation regulatory requirements in one place. However, an emissions trading scheme for international aviation may not be a good fit for a civil aviation regulatory statute.</p>

<p><b>Key dates</b></p> <p>Withheld due to active consideration</p>	<p>Legislation for CORSIA is required to be in place by 31 December 2020.</p> <p>[REDACTED]</p> <p>However, the inclusion of CORSIA might result in a faster consideration of this Bill.</p>	<p>Has no specified date for completion.</p> <p>Inclusion of CORSIA might result in a faster consideration of this Bill. However, given climate change issues are taking longer to progress through parliamentary processes, inclusion of CORSIA may have an adverse impact on getting the legislation in place by 31 December 2020.</p>
<p><b>Legislative priority</b></p>	<p>Priority of category 4: to be referred to a Select Committee in the year.</p>	<p>Priority of category 4: to be referred to a Select Committee in the year.</p>
<p><b>Portfolio Responsibility</b></p>	<p>Minister Genter</p>	<p>Minister Twyford</p>

13. You would need to seek permission from Minister Twyford if you wish to include the CORSIA in the Civil Aviation Bill as this Bill falls within his portfolio responsibilities. Inclusion of CORSIA in the Civil Aviation Bill will require Cabinet policy decisions and a direction to the Parliamentary Counsel Office to draft the CORSIA aspects. We would include recommendations for these in the Cabinet paper which seeks policy agreement and approval to draft legislation.
14. We consider both options have merit. Both Bills have the same legislative priority, and there are no policy or legal restrictions for either option. However, each option is at a different stage of development. The Civil Aviation Bill is already drafted and on the path towards introduction, while the Transport Emissions Bill is still to be approved for drafting.
15. On balance, we consider the Civil Aviation Bill may be a better legislative vehicle. The CORSIA measures are within its scope and it will mean that aviation regulation is largely contained within a single regulatory statute. We also note that the Civil Aviation Bill is further advanced in terms of its legislative development. We seek your agreement to this change.

**Other matters regarding international aviation**

16. Minister Shaw, in his speech for the first reading of the Zero Carbon Bill (ZCB), noted a number of concerns that have been raised about the ZCB at hui, workshops and in the media. One of these was if the ZCB should exclude international aviation and shipping, as currently proposed for consistency with the Paris Agreement, or if they should be brought into our domestic framework, as has been done in France and is being considered by the United Kingdom.
17. This matter may come up during the Select Committee process for the ZCB. We will work with the Ministry for the Environment to address questions that arise during that process.

**Timing and next steps**

18. We suggest you discuss the two legislative vehicle options for CORSIA with Minister Twyford, given your respective portfolio responsibilities.
19. We anticipate providing you with a draft Cabinet paper on CORSIA by 6 June 2019. The paper seeks Cabinet agreement to legislative drafting for CORSIA. We have a holding section pending your consideration of the legislative vehicle.

20. Following your agreement to the paper, we anticipate that it could be considered by the ENV Cabinet Committee on 27 June 2019, at the earliest.

**Recommendations**

21. The recommendations are that you:

- (a) **note** you have previously agreed to bespoke legislation being drafted for the Carbon Offsetting and Reduction Scheme for International Aviation (CORSA)
- (b) **note** proposed changes to the Civil Aviation Bill's purposes means it can now be considered as a legislative vehicle for CORSA
- (c) **agree** to discuss the proposed inclusion of CORSA within the Civil Aviation Bill with Minister Twyford to gauge his views, prior to confirming your preferred legislative vehicle for CORSA Yes/No
- (d) **agree** to seek Minister Twyford's agreement to include CORSA within the Civil Aviation Bill Yes/No
- (e) **agree** that CORSA is included in the Civil Aviation Bill; OR Yes/No
- (f) **agree** to reconfirm CORSA will be part of the Climate Change Response (Transport Emissions) Bill Yes/No
- (g) [REDACTED]

Withheld due to active consideration

Glen-Marie Burns  
Manager, Urban Development and Environment

**MINISTER'S SIGNATURE:**

**DATE:**