



Climate Change Response (Auction Price) Amendment Act 2021

Public Act 2021 No 4
Date of assent 12 March 2021
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Climate Change Response (Auction Price) Amendment Act 2021.

2 Commencement

This Act comes into force on 15 March 2021.

Part 1

Amendments to principal Act

3 Principal Act

This Part amends the Climate Change Response Act 2002 (the **principal Act**).

4 Section 30GA amended (Regulations for auctions to sell New Zealand units)

After section 30GA(2), insert:

- (2A) If regulations are to be made under this section,—
- (a) the Minister may, after considering the main matters and additional matters in section 30GC(5) and (6) of the Act, recommend the making of regulations that provide for the Minister to set a methodology that the

- person who conducts an auction must use to calculate a minimum price that,—
- (i) if the price is greater than the lowest trigger price prescribed under section 30GB(2)(e)(ii), must be recalculated as that trigger price (despite the initial calculation); and
 - (ii) if the price (as recalculated or, if not, as initially calculated) is greater than the minimum price prescribed under section 30GB(2)(e)(iii), becomes the **confidential reserve price** below which New Zealand units must not be sold at the auction; and
- (b) the Minister must, if recommending the making of regulations under paragraph (a), also recommend that the regulations—
- (i) specify criteria or requirements for the Minister’s decision to set the methodology, including a requirement to ensure that the methodology promotes the purpose of confidential reserve prices; and
 - (ii) specify that the purpose of confidential reserve prices is to prevent sales by auction under section 6A at prices significantly below the prices of New Zealand units sold at the time in other ways (on **secondary markets**) so that the sales by auction do not unduly affect secondary markets; and
 - (iii) require the methodology and any calculated prices to be kept confidential so that they are not disclosed to any potential buyer who participates in an auction; and
 - (iv) require the auction operator to provide the following information to the chief executive at a specified time after 1 or more auctions:
 - (A) details of the calculation of the price or prices using the methodology; and
 - (B) details of the auction bids in a form that does not identify any bidder, so that the chief executive can assess how any confidential reserve prices are working.

5 Section 30GB amended (Regulations about limits and price control settings for units)

Replace section 30GB(2)(e)(iii) with:

- (iii) the minimum price below which units must not be sold by auction, which may be zero.

Part 2

Amendments to Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020

6 Principal regulations

This Part amends the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020 (the **principal regulations**).

7 Regulation 3 amended (Interpretation)

In regulation 3(1), insert in their appropriate alphabetical order:

auction monitor has the meaning given in section 30GD(3) of the Act
confidential reserve price, in relation to an auction, has the meaning given in regulation 15A(1)(b)

8 Regulation 15 amended (Price control settings for units)

In regulation 15, insert as subclause (2):

- (2) To avoid doubt, if there is a confidential reserve price at an auction, that price (rather than the prescribed minimum price) is the lowest price at which New Zealand units may be sold at that auction.

9 New regulations 15A to 15D and cross-heading inserted

After regulation 15, insert:

Methodology and calculation of confidential reserve prices for auctions

15A Minister must set methodology for calculating confidential reserve price

- (1) The Minister must set a methodology that an auction operator must use to calculate a price that,—
- (a) if the price is greater than the lowest trigger price for the auction, must be recalculated as that trigger price (despite the initial calculation); and
 - (b) if the price (as recalculated or, if not, as initially calculated) is greater than the prescribed minimum price for the auction, becomes the **confidential reserve price** below which New Zealand units must not be sold at the auction.
- (2) In setting the methodology, the Minister must—
- (a) consider the main matters and additional matters in section 30GC(5) and (6) of the Act; and
 - (b) ensure that the methodology promotes the purpose of confidential reserve prices, which is to prevent sales by auction under section 6A of the Act at prices significantly below the prices of New Zealand units sold at the time in other ways (on **secondary markets**) so that the sales by auction do not unduly affect secondary markets; and

- (c) ensure that the methodology includes—
 - (i) a way to determine a representative price for New Zealand units sold on secondary markets recently before the auction, taking into account any volatility in prices; and
 - (ii) a way to determine a price below the representative price that will achieve the purpose of confidential reserve prices.
- (3) In setting the methodology, the Minister must consult—
 - (a) the Minister of Finance; and
 - (b) the 1 or more auction monitors, if any.
- (4) The Minister—
 - (a) must ensure that the methodology is set, and remains set, from the commencement of this regulation; but
 - (b) may change the methodology by setting it differently at any time.

15B Minister must review methodology after certain auctions

- (1) This regulation applies if, at any auction, no bids are successful because the final clearing price is less than the confidential reserve price.
- (2) The Minister must—
 - (a) review the methodology by complying with regulation 15A as if setting the methodology; and
 - (b) if required, change the methodology by setting it under that regulation.

15C Auction operator must calculate confidential reserve price

- (1) The chief executive must provide the methodology to an auction operator as soon as is reasonably practicable after it is set under regulation 15A.
- (2) The auction operator must use the methodology to calculate a price that, if greater than the prescribed minimum price for the auction, is the confidential reserve price.
- (3) The methodology that must be used is the one that, 2 working days before the start of the day of the auction, had been most recently provided by the chief executive.

15D Methodology and calculated prices are confidential

- (1) The auction operator, and any other person, must keep confidential the methodology and the calculated price so that they are not disclosed to any potential buyer who participates in an auction.
- (2) To avoid doubt, as long as that information is not disclosed to any potential buyer who participates in an auction, this regulation does not prevent information from being provided (for example, under regulation 36A or to an auction monitor).

10 Regulation 16 amended (Auction operator must make auction notices publicly available)

After regulation 16(2)(d), insert:

- (da) a statement that there may also be a confidential reserve price for the auction that is not known to bidders:

11 Regulation 30 amended (Process for determining auction results)

Replace regulation 30(5)(b) with:

- (b) sell units at that price if required by regulation 33 (if there are successful bids under that regulation).

12 Regulation 33 amended (Requirement to sell at final clearing price)

In regulation 33, insert as subclause (2):

- (2) However, no bids are successful, and no units may be sold to bidders, if—
 - (a) there is a confidential reserve price at the auction; and
 - (b) the final clearing price is less than the confidential reserve price.

13 Cross-heading above regulation 36 replaced

Replace the cross-heading above regulation 36 with:

Publication of auction results and provision of certain information

14 Regulation 36 amended (Requirement to make auction results publicly available)

- (1) In regulation 36(2), replace “In this regulation, **auction results** means” with “The **auction results** are”.
- (2) After regulation 36(2), insert:
- (3) However, if no bids were successful because the final clearing price was less than the confidential reserve price, the **auction results** are solely a statement to that effect.

15 New regulation 36A inserted (Requirement to provide information relevant to confidential reserve price)

After regulation 36, insert:

36A Requirement to provide information relevant to confidential reserve price

The auction operator must, as soon as is reasonably practicable after an auction, provide the following information about the auction to the chief executive:

- (a) details of the calculation of the price using the methodology set under regulation 15A; and

- (b) the bid volume and bid price of each bid in a form that does not identify the bidder.

16 Schedule 1 amended

In Schedule 1, after Part 1,—

- (a) insert the Part set out in the Schedule of this Act as the last Part; and
- (b) make all necessary consequential amendments.

17 Schedule 3 amended

In Schedule 3, table of price control settings, column 2, replace the heading with “**Minimum price below which units must not be sold by auction (\$)**”.

Schedule
New Part 2 inserted into Schedule 1 of principal regulations

s 16

Part 2
Provisions relating to Climate Change Response (Auction Price)
Amendment Act 2021

3 Meaning of amendments

In this Part, **amendments** means the amendments made to these regulations by the Climate Change Response (Auction Price) Amendment Act 2021.

4 Setting and providing first methodology

Actions done for the following purposes are taken as having been done under the amendments, even if they are done before the amendments commence or are enacted:

- (a) setting the first methodology under regulation 15A, to ensure that regulation 15A(4)(a) is satisfied; and
- (b) providing the first methodology to an auction operator under regulation 15C, to ensure that regulation 15C is satisfied.

5 Auction notice for early auction

If an auction is held within 30 days after the amendments commence, the notice under regulation 16 need not include the statement in regulation 16(2)(da).

Legislative history

5 February 2021
10 February 2021
3 March 2021
9 March 2021
12 March 2021

Introduction (Bill 7–1)
First reading and referral to Environment Committee
Reported from Environment Committee (Bill 7–2)
Second reading, committee of the whole House, third reading
Royal assent

This Act is administered by the Ministry for the Environment.