



# Climate Change Response (Late Payment Penalties and Industrial Allocation) Amendment Act 2023

Public Act 2023 No 49  
Date of assent 24 August 2023  
Commencement see section 2

## Contents

	Page
1 Title	2
2 Commencement	2
3 Principal Act	3
<b>Part 1</b>	
<b>Amendments relating to late payment penalties for low-volume forestry activities</b>	
4 Section 89 amended (EPA to publish certain information)	3
5 Section 120A amended (Liabilities, penalties, and interest when emissions returns amended)	3
6 Section 134 amended (Penalty for failing to surrender or repay units by due date)	3
7 New sections 134AA and 134AB inserted	4
134AA Penalty for failing to surrender or repay units by due date (where liability is for lower amount)	4
134AB Determining penalty for failing to surrender or repay additional units by due date	6
8 Section 137 amended (Interest for late payment)	7
9 Section 159 amended (Recovery of costs)	7
<b>Part 2</b>	
<b>Amendments relating to industrial allocations</b>	
10 Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))	7
11 Section 3B amended (Consultation about certain regulations, orders, and notices)	7

12	New section 84AA inserted (Validated allocation adjustment for projected data)	7
	84AA Validated allocation adjustment for projected data	7
13	Section 149 amended (Sharing information)	9
14	Section 161A amended (Regulations in relation to eligible industrial activities)	9
15	Section 161C amended (Eligible industrial activities)	12
16	Section 161D amended (Power to require information for purposes of allocation to industry)	12
17	Section 161E amended (Requirements in respect of notice given under section 161D)	12
18	New section 161F inserted (When projected data may be provided)	13
	161F When projected data may be provided	13
19	New section 161FA inserted (Determining electricity allocation factors)	14
	161FA Determining electricity allocation factors	14
	<i>Amendment to Climate Change (Eligible Industrial Activities) Regulations 2010</i>	
20	Principal regulations	15
21	New regulation 6A inserted (Modelling assumptions for market model used to determine allocation factors for electricity)	15
	6A Modelling assumptions for market model used to determine allocation factors for electricity	16
	<b>Part 3</b>	
	<b>Transitional provisions</b>	
22	Schedule 1AA amended	16
	<b>Schedule</b>	
	<b>New Part 3 inserted into Schedule 1AA</b>	

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

**1 Title**

This Act is the Climate Change Response (Late Payment Penalties and Industrial Allocation) Amendment Act 2023.

**2 Commencement**

- (1) This Act comes into force on the day after the date of Royal assent.
- (2) However, the following provisions of this Act come into force on 1 January 2024:
  - (a) section 19:
  - (b) section 21:

(c) section 22(3), in respect of clause 42 of Schedule 1AA only.

### 3 Principal Act

This Act amends the Climate Change Response Act 2002.

## Part 1

### Amendments relating to late payment penalties for low-volume forestry activities

#### 4 Section 89 amended (EPA to publish certain information)

- (1) In section 89(1B)(e), after “section 134”, insert “or 134AA”.
- (2) In section 89(1C)(a), after “section 134”, insert “or 134AA”.

#### 5 Section 120A amended (Liabilities, penalties, and interest when emissions returns amended)

- (1) In section 120A(3)(c), after “section 134”, insert “or (if applicable) section 134AA”.
- (2) In section 120A(5)(a), after “section 134”, insert “or (if applicable) section 134AA”.
- (3) In section 120A(5)(a)(i), after “section 134(3)(d)”, insert “or (if applicable) section 134AA(7)(f)(i)”.
- (4) In section 120A(5)(a)(ii), after “section 134(3)(f)”, insert “or (if applicable) section 134AA(7)(f)(iii)”.
- (5) In section 120A(7)(b), after “section 134”, insert “or (if applicable) section 134AA”.
- (6) In section 120A(8), replace the definition of **penalty notice** with:

##### **penalty notice—**

- (a) means a notice given to a person under section 134(3) or (if applicable) section 134AA(7) (because of the person’s failure to surrender or repay units by the due date); but
- (b) does not include a notice given to a person under section 134AA(7) if the penalty imposed by the notice has been set aside (for example, as a result of a review carried out under section 144)

#### 6 Section 134 amended (Penalty for failing to surrender or repay units by due date)

- (1) In the heading to section 134, after “**by due date**”, insert “**(general rule)**”.
- (2) Replace section 134(1) with:
  - (1) This section applies if—
    - (a) a person fails, by the due date,—

- (i) to surrender units that the person is required to surrender; or
  - (ii) to repay units that the person is required to repay; and
- (b) section 134AA does not apply to the person.

## 7 New sections 134AA and 134AB inserted

After section 134, insert:

### **134AA Penalty for failing to surrender or repay units by due date (where liability is for lower amount)**

- (1) This section applies if—
- (a) a person fails, by the due date,—
    - (i) to surrender units that the person is required to surrender; or
    - (ii) to repay units that the person is required to repay; and
  - (b) that liability to surrender or repay the units resulted from—
    - (i) a forestry activity carried out on or after 1 January 2025; and
    - (ii) 1 or more of the following things in relation to the forestry activity:
      - (A) an emissions return with an emissions return period and under which the average liability per year of that period is less than 25,000 units;
      - (B) an emissions return without an emissions return period and under which the liability is less than 25,000 units;
      - (C) any other requirement in this Act or secondary legislation made under this Act (for example, the requirement to repay units under section 125 or any requirement to surrender units equal to a unit balance) and under which the liability is less than 25,000 units.

#### *Initial notice*

- (2) The EPA must give a notice to the person that—
- (a) refers to the person's failure to surrender or repay units by the due date and the provision under which the person is liable to surrender or repay the units; and
  - (b) advises that the person may submit to the EPA a document containing information for the purpose of satisfying the EPA that the failure occurred through no fault of the person; and
  - (c) advises that, no earlier than 20 working days after issuing the notice, the EPA will make a decision under subsection (6) on the person's liability to pay a penalty under this section and will then give a further notice advising whether the penalty applies.

*Liability for penalty*

- (3) The person must (in addition to surrendering or repaying the units) pay to the EPA a penalty calculated as follows:

$$a \times b \times c$$

where—

- a is the multiplier determined under subsection (4)
- b is the number of units that the person failed to surrender or repay by the due date
- c is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W.
- (4) The multiplier for a person liable to pay a penalty under this section is—
- (a) 0.5 if—
- (i) the activity in respect of which the person is liable for a penalty is an activity listed in Part 1 or 1A of Schedule 4; or
- (ii) the person's liability to surrender or repay units resulted only from a requirement of the type referred to in subsection (1)(b)(ii)(C) and the requirement does not relate to a specific forestry activity carried out by the person; or
- (b) 0.25 if the activity in respect of which the person is liable for a penalty is an activity listed in Part 1 or 1A of Schedule 3.
- (5) However, a person is not liable to pay a penalty under this section if the EPA is satisfied that the failure to surrender or repay units occurred through no fault of the person.
- (6) The EPA must decide, no earlier than 20 working days after issuing the notice under subsection (2), if it is satisfied that the person's failure to surrender or repay units occurred through no fault of the person.

*Notice of penalty*

- (7) The EPA must, as soon as practicable after making the decision under subsection (6), give a further notice to the person that—
- (a) refers to the person's failure to surrender or repay units by the due date and the provision under which the person is liable to surrender or repay the units; and
- (b) refers to the initial notice that the EPA has given to the person under subsection (2); and
- (c) refers to any relevant notice that the EPA has given the person in respect of the requirement to surrender or repay the units (for example, a notice given under section 123(1)); and
- (d) specifies the number of units that the person must surrender or repay; and

- (e) sets out the following in relation to the EPA's decision under subsection (6):
  - (i) the particulars of the decision;
  - (ii) any grounds and information on which the decision was based;
  - (iii) the advice that the person may seek a review of the decision under section 144; and
- (f) if a penalty is payable,—
  - (i) specifies the amount of the penalty that the person must pay under this section; and
  - (ii) advises that the person may request to enter into a deferred payment arrangement under section 135A; and
  - (iii) advises that, unless the units are surrendered or repaid and the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.

*Part year treated as full year*

- (8) For the purposes of subsection (1)(b)(ii)(A), any part of a calendar year in an emissions return period must be treated as a full calendar year.

*Meaning of due date*

- (9) In this section, **due date** means the final date by which the person was required to surrender or repay the units.

**134AB Determining penalty for failing to surrender or repay additional units by due date**

- (1) This section applies if—
  - (a) the EPA amends an emissions return in relation to which it has already given a penalty notice; and
  - (b) the amendment results in a liability for the person to whom the notice was given to surrender or repay additional units; and
  - (c) the person fails to surrender or repay the additional units by the due date.
- (2) If, at the time of the failure to surrender or repay the additional units, the most recently issued penalty notice specified a penalty calculated under section 134, a penalty for failing to surrender or repay the additional units must also be calculated under section 134.
- (3) If, at the time of the failure to surrender or repay the additional units, the most recently issued penalty notice specified a penalty calculated under section 134AA, the EPA, in determining a penalty in relation to the person's failure to surrender or repay the additional units, must disregard the base units for the purposes of the liability thresholds in section 134AA(1)(b)(ii).
- (4) In this section,—

**additional units** has the same meaning as in section 120A(3)(b)

**base units** has the same meaning as in section 120A(3)(b)

**due date** means the final date by which the person was required to surrender or repay the units

**penalty notice** has the same meaning as in section 120A(8).

## **8 Section 137 amended (Interest for late payment)**

- (1) In section 137(1)(c), after “section 134”, insert “or 134AA”.
- (2) In section 137(2)(b), after “section 134”, insert “or 134AA”.

## **9 Section 159 amended (Recovery of costs)**

In section 159(1)(a), after “section 134”, insert “or a notice under section 134AA(2)”.

## **Part 2**

### **Amendments relating to industrial allocations**

## **10 Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))**

After section 3A(b)(x), insert:

- (xa) section 161FA(6) (assumptions for the model used to determine the electricity allocation factor):

## **11 Section 3B amended (Consultation about certain regulations, orders, and notices)**

After section 3B(1)(i), insert:

- (ia) section 161FA(6) (assumptions for the model used to determine the electricity allocation factor):

## **12 New section 84AA inserted (Validated allocation adjustment for projected data)**

After section 84, insert:

### **84AA Validated allocation adjustment for projected data**

- (1) This section applies if—
  - (a) the Minister has issued a notice in respect of an activity in accordance with section 161F(5) and then determined any of the matters described in section 161D(3)(a) for the years specified in the notice; and
  - (b) regulations have been made—
    - (i) on the Minister’s recommendation based on the determination referred to in paragraph (a); and

- (ii) that affect the entitlement of eligible persons to the allocation of New Zealand units for the activity in any of those years.
- (2) If a new activity (within the meaning of section 161F(1)) was prescribed as an eligible industrial activity in reliance on projected information in accordance with section 161F(3) and the Minister has determined as a result of the notice referred to in subsection (1)(a)—
  - (a) that the activity was highly emissions-intensive in any year, the regulations must prescribe the activity as highly emissions-intensive for that year:
  - (b) that the activity was not moderately emissions-intensive or highly emissions-intensive in any year, the regulations must have the effect of removing the eligible industrial activity for that year.
- (3) Section 161A(5) does not apply to regulations that are made, under section 161A(1), in accordance with subsection (2).
- (4) An eligible person who has received an allocation (other than a provisional allocation that is yet to be adjusted under section 83 or 84) for an activity in respect of a year specified in the notice must—
  - (a) calculate the person's final allocation entitlement for the activity for the year in accordance with the formula in section 83(2) (applying any regulations as referred to in subsection (1)(b)); and
  - (b) using the formula in subsection (6), calculate the person's validated allocation adjustment; and
  - (c) if the validated allocation adjustment is—
    - (i) a negative number, apply to the EPA under section 86 for an allocation of the number of units in the validated allocation adjustment:
    - (ii) a positive number, notify the EPA of the person's validated allocation adjustment and repay the number of units in the validated allocation adjustment by transferring the units to a Crown holding account designated by the EPA.
- (5) If subsection (4)(c) applies, the eligible person must apply to or notify the EPA in accordance with that subsection—
  - (a) at the time that the person next applies to or notifies the EPA under section 83 or 84(1) (in respect of an annual allocation adjustment or a closing allocation adjustment); or
  - (b) if the person has already applied to or notified the EPA under section 84(1) in respect of that year, within 20 working days after the regulations described in subsection (1)(b) come into force.
- (6) The formula for the calculation of a person's validated allocation adjustment is as follows:



$$VA = RA - FA$$

where—

- VA is the person’s validated allocation adjustment of units for the eligible industrial activity for the year
- RA is the allocation that the person has received for the eligible industrial activity for the year (as adjusted under section 83 or 84, if applicable)
- FA is the person’s final allocation entitlement for the eligible industrial activity for the year calculated under section 83(2).

### 13 Section 149 amended (Sharing information)

- (1) In section 149(1), replace “this section” with “subsection (2)”.
- (2) After section 149(2), insert:
- (3) The purpose of subsection (4) is to facilitate the provision of information that is held by the EPA and relevant to the allocation of New Zealand units for an eligible industrial activity (including any application, adjustment, response to a requirement for further information, or review of an allocation decision) to the Climate Change Commission and to the chief executive.
- (4) The EPA must provide information described in subsection (3), on request, to—
  - (a) the Commission:
  - (b) the chief executive.
- (5) Subsections (3) and (4) do not limit subsections (1) and (2).

### 14 Section 161A amended (Regulations in relation to eligible industrial activities)

- (1) Replace section 161A(2) and (3) with:
- (2) Before recommending the making of regulations under subsection (1)(a) that prescribe an activity as an eligible industrial activity, the Minister must be satisfied that—
  - (a) the effect of those regulations is—
    - (i) likely to contribute to achieving—
      - (A) any targets or budgets set for reducing emissions of greenhouse gases; and
      - (B) New Zealand’s nationally determined contributions under the Paris Agreement; and
    - (ii) more likely to contribute to those targets, budgets, and nationally determined contributions than the current allocation that is provided in accordance with regulations made under this section; and
    - (iii) that the anticipated cost to the taxpayer of providing the allocation for the activity is likely to be less than the cost to the taxpayer of

- the current allocation that is provided in accordance with regulations made under this section; and
- (b) the activity is—
    - (i) moderately emissions-intensive or highly emissions-intensive; and
    - (ii) trade-exposed.
- (2A) However, subsection (2)(a) does not apply to regulations made under subsection (1)(a) to the extent that they relate to an eligible industrial activity prescribed before 1 July 2023.
- (3) The Minister may recommend the making of regulations under subsection (1) that have the effect of removing an activity from the regulations only if, in relation to the activity, the Minister is no longer satisfied of 1 or both of the matters described in subsection (2)(b).
- (3A) Regulations made under subsection (1) must not amend an allocative baseline for a prescribed product of an eligible industrial activity that has been prescribed under subsection (1)(c) unless—
- (a) at least 5 years have passed—
    - (i) since the baseline was most recently amended after the Minister issued a notice under section 161D(1) in respect of the industrial activity; or
    - (ii) if subparagraph (i) does not apply, since the baseline for the product was first prescribed; and
  - (b) before recommending the making of the regulations that amend the baseline, the Minister has issued a notice under section 161D(1) for the purpose described in section 161D(3)(a)(ii) in respect of the industrial activity; and
  - (c) the Minister is satisfied that the current allocation setting for the product, as calculated in accordance with the formula in subsection (4C)(a), is equal to or greater than the prospective allocation setting for the product, as calculated in accordance with the formula in subsection (4C)(b).
- (3B) However, subsection (3A) does not apply to an amendment of an allocative baseline—
- (a) due to a change to any 1 or more of the following:
    - (i) an emissions factor:
    - (ii) an electricity allocation factor:
    - (iii) an exemption set out in an order made under section 60:
  - (b) on the basis of information received in response to a notice issued in accordance with section 161F(5) (after the first year of an activity being prescribed as an eligible industrial activity or after the first year of a new product or new allocative baseline being prescribed as part of an eligible industrial activity).

- (2) After section 161A(4), insert:
- (4A) The Minister may recommend the making of regulations under subsection (1)(d)(i) that prescribe an electricity allocation factor only if the allocation factor has been notified to the Minister under section 161FA.
- (4B) Regulations made under subsection (1)—
- (a) may permit persons to apply for and receive an allocation in respect of a period beginning on 1 January of the year in which regulations are made even if the regulations come into force on a later date in that year:
  - (b) may affect the level of allocation a person is entitled to receive for a year in which the person has received a provisional allocation even if the regulations come into force in the year following the year for which the person received the provisional allocation:
  - (c) may, if they are of a kind described in section 84AA(1)(b), affect the level of allocation a person is entitled to receive for a year to which section 84AA applies regardless of when the regulations come into force.
- (4C) For the purposes of subsection (3A)(c),—
- (a) the current allocation setting for the product must be calculated in accordance with the following formula:
 
$$\text{CAS} = \text{AB} \times \text{LA}$$
 where—
 

CAS is the current allocation setting

AB is the allocative baseline for the product prescribed in regulations made under this section as in force immediately before the recommendation is made

LA is the level of assistance for the eligible industrial activity for the current year, which is the level of assistance described in item LA in the formula in section 83(2):
  - (b) the prospective allocation setting for the product must be calculated in accordance with the following formula:
 
$$\text{PAS} = \text{PB} \times \text{OLA}$$
 where—
 

PAS is the prospective allocation setting

PB is the prospective allocative baseline for the product as calculated in accordance with section 161C(2) to (5) on the basis of information provided to the Minister as a result of the notice referred to in subsection (3A)(b)

OLA is the original level of assistance for the activity, which is,—

    - (i) for a moderately emissions-intensive eligible industrial activity, 0.6:

- (ii) for a highly emissions-intensive eligible industrial activity, 0.9.

- (3) In section 161A(5), replace “5 years” with “2 years”.

**15 Section 161C amended (Eligible industrial activities)**

- (1) In section 161C(1) and (2), replace “section 161A(3)” with “section 161A(2)”.
- (2) Replace section 161C(4) with:
- (4) Despite subsection (3)(c), the Minister may adjust the number of whole tonnes of included emissions shown in the information referred to in section 161D(1)(e)(i)(C) provided by any persons carrying out an activity specified in a notice given under section 161D(1)—
- (a) after taking into account—
    - (i) any electricity-related contract that—
      - (A) affects the electricity cost increase that any of the persons will face due to the obligation imposed by this Act on participants to surrender units; and
      - (B) was in force on the date of the notice; or
    - (ii) any information relating to any such contracts:
  - (b) as a consequence of any change that occurred on or after the date of the notice to any 1 or more of the following:
    - (i) an emissions factor:
    - (ii) an electricity allocation factor:
    - (iii) an exemption set out in an order made under section 60.

**16 Section 161D amended (Power to require information for purposes of allocation to industry)**

- (1) In section 161D(3)(a), replace “section 161A(3)” with “section 161A(2)”.
- (2) After section 161D(3)(d), insert:
- (e) whether the current allocation setting for the product is equal to or greater than the prospective allocation setting for the product (as described in section 161A(3A)(c) and calculated in accordance with the formulas in section 161A(4C)).
- (3) After section 161D(3), insert:
- (3A) The Minister must, for the purpose described in subsection (3)(e), issue a notice under this section in respect of an eligible industrial activity at least once in every 10-year period.

**17 Section 161E amended (Requirements in respect of notice given under section 161D)**

- (1) After section 161E(2)(a)(i)(E), insert:

- (F) the combustion of used tyres for the purpose of generating electricity or industrial heat; and
  - (G) the consumption of carbon dioxide as a feedstock if that carbon dioxide is derived from an activity in Schedule 3 or 4 and a participant is required to surrender units under this Act for that activity; and
- (2) In section 161E(2)(a)(ii), formula, item E, replace “section 161D(1)(e)(ii) and (iii)” with “section 161D(1)(e)(i)(B) and (C)”.
- (3) In section 161E(2)(b), replace “section 161D(1)(e)(ii) and (iii)” with “section 161D(1)(e)(i)(B) and (C)”.
- (4) Repeal section 161E(3) and (4).

### 18 New section 161F inserted (When projected data may be provided)

After section 161E, insert:

#### 161F When projected data may be provided

- (1) Subsection (2) applies if actual data is not (or may not be) available in respect of an activity for the years specified in a notice made under section 161D because the activity is—
- (a) an activity (a **new activity**) other than an activity that is prescribed as an eligible industrial activity; or
  - (b) an eligible industrial activity—
    - (i) that involves a product (a **new product**) that has not been prescribed in regulations made under section 161A(1) for that activity; or
    - (ii) that includes an allocative baseline (a **different allocative baseline**) that may differ from the allocative baseline that has been prescribed in regulations made under section 161A(1) for that activity for a product included in the activity; or
    - (iii) for which actual data is (or may not be) available for some other reason.
- (2) A notice made under section 161D may require the information described in section 161D(1)(e) on a projected basis in respect of future years (instead of, or as well as, information on an actual basis for past years) and, for that purpose, sections 161D and 161E must be read accordingly.
- (3) If a new activity is prescribed as an eligible industrial activity in reliance (in whole or in part) on projected information provided in accordance with subsection (2), the activity must be prescribed as moderately emissions-intensive (regardless of whether any information indicates that the activity is highly emissions-intensive).
- (4) Subsection (3) is subject to section 84AA(2).

- (5) The Minister must issue a notice under section 161D for the purpose described in section 161D(3)(a) in the second relevant financial year for an activity for which regulations were made under section 161A on the basis of data obtained in accordance with subsection (2).
- (6) The notice must require the information described in section 161D(1)(e) in respect of the first financial year of operation.
- (7) In this section,—
- first relevant financial year**, in relation to an activity, means the first full financial year that commences after—
- (a) regulations have been made under section 161A on the basis of data obtained in accordance with subsection (2)—
- (i) prescribing a new activity as an eligible industrial activity; or
- (ii) including a new product or setting a different allocative baseline in relation to an eligible industrial activity; and
- (b) a person has applied for industrial allocation under section 86 in relation to the new activity, the new product, or that different allocative baseline
- second relevant financial year** means the financial year that follows the first relevant financial year.

## 19 New section 161FA inserted (Determining electricity allocation factors)

After section 161F (as inserted by section 18 of this Act), insert:

### 161FA Determining electricity allocation factors

- (1) The Minister may recommend the making of regulations under section 161A(1)(d)(i) that prescribe an allocation factor for electricity for a calendar year only if the Electricity Authority notifies the allocation factor for the year in accordance with this section.
- (2) The Electricity Authority must notify the Minister of the allocation factor for a year on or before 31 July in that year determined in accordance with the following formula:

$$a = (b + c + d) \div 3$$

where—

- a is the allocation factor for the relevant year
- b is the ETS impact on the price of electricity in the financial year that ends on 30 June in the relevant year
- c is the ETS impact on the price of electricity in the financial year preceding the financial year described in the definition of variable b
- d is the ETS impact on the price of electricity for the financial year preceding the financial year described in the definition of variable c.

- (3) The Electricity Authority must use a market model to determine the ETS impact on the price of electricity for each of the financial years described in the definitions of variables b, c, and d.
- (4) The market model must—
- (a) be consistent with the market clearing algorithm set out in the Electricity Industry Participation Code 2010; and
  - (b) use, as the counterfactual input, a reasonable estimate of the offers that would have been made for the electricity actually offered in the financial year if there were no liability to surrender units to cover emissions; and
  - (c) comply with any regulations made under subsection (6).
- (5) The Electricity Authority must ensure that the market model, and any input data necessary to operate the model, is publicly available.
- (6) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing modelling assumptions for the purpose of the market model.
- (7) In this section, **ETS impact**, in relation to the price of electricity, is the modelled impact of the emissions trading scheme on the price of electricity.
- (8) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

*Amendment to Climate Change (Eligible Industrial Activities) Regulations 2010*

**20 Principal regulations**

Section 21 amends the Climate Change (Eligible Industrial Activities) Regulations 2010.

**21 New regulation 6A inserted (Modelling assumptions for market model used to determine allocation factors for electricity)**

After regulation 6, insert:

**6A Modelling assumptions for market model used to determine allocation factors for electricity**

- (1) Subclause (2) prescribes modelling assumptions for the purpose of the market model that the Electricity Authority uses to determine the ETS impact on the price of electricity in a financial year under section 161FA(3) of the Act.
- (2) The modelling assumptions are that,—
  - (a) in the absence of the emissions trading scheme, thermal electricity generation would be offered at lower prices as generators' marginal costs would be lower;
  - (b) as a consequence of the modelling assumption in paragraph (a), hydro-electricity generators that have controllable water storage would offer electricity at lower prices, because lower overall prices reduce the opportunity cost of stored water.

### **Part 3**

#### **Transitional provisions**

**22 Schedule 1AA amended**

- (1) In Schedule 1AA, after clause 17(2), insert:
  - (2A) To avoid doubt, for the purposes of subclause (1)(b)(ii)(A), any part of a calendar year in an emissions return period must be treated as a full calendar year.
- (2) In Schedule 1AA, after clause 17(3), insert:
  - (3A) *See* clauses 37 and 38 for further transitional provisions relating to penalties for failure to surrender or repay units that apply if—
    - (a) a person fails to surrender or repay additional units following an amendment to a return affected by a penalty under this clause; or
    - (b) a person fails to surrender or repay units in relation to an emissions return that covers activities occurring both before and during 2025.
- (3) In Schedule 1AA,—
  - (a) insert the Part set out in the Schedule of this Act as the last Part; and
  - (b) make all necessary consequential amendments.



**Schedule**  
**New Part 3 inserted into Schedule 1AA**

s 22

**Part 3**  
**Provisions relating to Climate Change Response (Late Payment  
Penalties and Industrial Allocation) Amendment Act 2023**

*Provisions relating to penalty for failing to surrender or repay additional units  
by due date*

- 37 Determining penalty for failing to surrender or repay additional units by due date: provision to apply instead of section 134AB if liability resulted from pre-2025 forestry activity**
- (1) This clause applies if—
- (a) the EPA first gave a notice (a **first notice**) to a person specifying a penalty calculated under clause 17(2) or section 134; and
  - (b) the EPA amends an emissions return in relation to which it has already given a first notice; and
  - (c) the amendment results in a liability for the person to whom the first notice was given to surrender or repay additional units; and
  - (d) the person fails to surrender or repay the additional units by the due date.
- (2) Section 134AB does not apply in relation to the person unless the liability to surrender or repay the additional units resulted from a forestry activity carried out on or after 1 January 2025.
- (3) If, at the time of the failure to surrender or repay the additional units, the first notice specified a penalty calculated under section 134, a penalty for failing to surrender or repay the additional units must also be calculated under section 134.
- (4) If, at the time of the failure to surrender or repay the additional units, the first notice specified a penalty calculated under clause 17(2), the EPA, in determining a penalty in relation to the person's failure to surrender or repay the additional units, must disregard the base units for the purposes of the liability thresholds in subclause 17(1)(b)(ii).
- (5) In this clause,—
- additional units** has the same meaning as in section 120A(3)(b)
  - base units** has the same meaning as in section 120A(3)(b)
  - due date** means the final date by which the person was required to surrender or repay the units.

**38 Penalty for failing to surrender or repay units by due date (where emissions return covers activities both before and during 2025)**

- (1) This clause applies if—
  - (a) a person fails, by the due date,—
    - (i) to surrender units that the person is required to surrender; or
    - (ii) to repay units that the person is required to repay; and
  - (b) that liability to surrender or repay the units resulted from an emissions return of the type referred to in section 134AA(1)(b)(ii)(A); and
  - (c) the relevant emissions return period relates to—
    - (i) forestry activities carried out in either or both of 2023 and 2024; and
    - (ii) forestry activities carried out in 2025.
- (2) Clause 17 applies to the person in respect of all the activities to which the emissions return relates as if the activities had all been carried out before 1 January 2025.
- (3) In this clause, **due date** means the final date by which the person was required to surrender or repay the units.

*Provisions relating to review of existing eligible industrial activities***39 Review of existing eligible industrial activities: call for data**

- (1) This clause applies to an activity that, on 1 July 2023, is an eligible industrial activity.
- (2) The Minister must issue a notice under section 161D in respect of the activity for the purpose described in section 161D(3)(a).
- (3) The Minister must issue the notice no later than 31 December 2026.
- (4) The notice must, for the purposes of section 161D(1)(d), specify the financial years 2016/17, 2017/18, 2018/19, 2019/20, and 2020/21 as the financial years for which information must be provided under the notice.
- (5) A person who is required to comply with a notice providing information may specify 1 financial year, either 2019/20 or 2020/21, for the purposes of subclause (6).
- (6) The Minister must disregard the information from the financial year specified under subclause (5) when determining allocative baselines for an eligible activity.

**40 Restriction on regulations relating to data collected as result of call for data under clause 39**

- (1) This clause applies in relation to the making of regulations under section 161A arising from information collected as a result of a notice issued under section 161D in accordance with clause 39.
- (2) The power to make regulations for the purposes set out in section 161A(1)(a) and (b)(ii) do not apply.

**41 Restriction on application of section 161A(3A)**

Section 161A(3A) does not apply in relation to the making of regulations under section 161A for the purpose set out in section 161A(1)(c) arising from information collected as a result of a notice issued under section 161D in accordance with clause 39.

*Provision relating to electricity allocation factor for 2024 and 2025*

**42 Calculating electricity allocation factors for 2024 and 2025**

- (1) This clause modifies section 161FA(2) for the purposes of determining an allocation factor in accordance with the formula in that section for the years commencing 1 January 2024 and 1 January 2025.
- (2) In the formula in section 161FA(2),—
  - (a) for the year commencing 1 January 2024,—
    - (i) variable c in the formula equals 0.537:
    - (ii) variable d in the formula equals 0.537:
  - (b) for the year commencing 1 January 2025, variable d in the formula equals 0.537.

**Legislative history**

2 December 2022	Introduction (Bill 207–1)
21 February 2023	First reading and referral to Environment Committee
9 August 2023	Reported from Environment Committee (Bill 207–2)
15 August 2023	Second reading, committee of the whole House, third reading
24 August 2023	Royal assent

This Act is administered by the Ministry for the Environment.