



Draft Cabinet paper – Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020

Date Submitted:	3 September 2020	Tracking #: 2020-B-07141	
Security Level	In Confidence	MfE Priority:	Non-Urgent


	Action sought:	Response by:
To Hon James Shaw, Minister for Climate Change	Provide feedback on Cabinet paper	7 Sep 2020

Actions for Minister's Office Staff	Return the signed report to MfE by 7 September 2020
Number of appendices and attachments #1	Titles of appendices and attachments (ie separate attached documents): 1. Draft Cabinet paper - Climate Change (Auctions, Limits and Price Controls for Units) Regulations 2020

Ministry for the Environment contacts

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Draft Cabinet paper – *Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020*

1. This briefing provides a draft Cabinet paper for your review and feedback – *Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020*. The paper is largely procedural and seeks:
 - authorisation for regulations that set technical rules for auctioning, including for registration of bidders, how auctions are run, how results are determined and publication of auction results
 - authorisation for these regulations to replace the existing Climate Change (Limits and Price Control Settings for Units) Regulations 2020 as approved by Cabinet in June 2020[2020-C-06808 refers], while leaving the values of the limits and price controls in the previous regulations unchanged.
2. This Cabinet paper does not include regulations to set a technical reserve price. 9(2)(h)


We consider the lack of a technical reserve price presents a low risk to the successful operation of NZ ETS auctions.
3. We ask that you provide feedback on the Cabinet paper by Monday 7 September 2020 so we can provide a revised version for Ministerial consultation. The paper is due to be lodged on Thursday 17 September 2020 for the Cabinet Business Committee meeting on Monday 21 September 2020.
4. With the change in election date to 17 October 2020, we recommend these regulations be made by Cabinet before the election. This will ensure they are in place before the end of the year so that the first NZ ETS auction can take place as scheduled on 17 March 2021.

Context

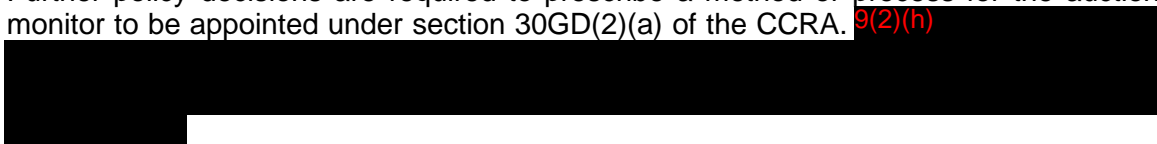
5. Despite the changed circumstances brought about by COVID-19, it is important to ensure that NZ ETS auctions start on schedule on 17 March 2021, as publicly announced. Any postponement will delay the smooth and just transition to a low emission economy that the Government is committed to.
6. In March 2020, as part of a wider package of NZ ETS reforms, Cabinet agreed on the regulations for auctioning rules and approved the issuing of drafting instructions to the Parliamentary Counsel Office [DEV-20-MIN-0047 refers].
7. The regulations were originally planned to go before the Cabinet Legislation Committee for a decision in early November 2020.
8. Under section 30H of the CCRA regulations about units and auctions come into force three months after the date of their notification in the Gazette. Prior to the first auction, prospective bidders need to register with the auction operator and the regulations should be in place for that process. This means that regulations should take effect at least 30 days before 17 March 2021. Working backwards from that date means that regulations for auctioning need to be notified in the Gazette before mid-November 2020.
9. Due to the change in election date it is possible that the caretaker convention may still be in place in mid-November 2020. To avoid the risk that these regulations are not made in time for the first NZ ETS auction we have expedited the drafting of these regulations so they can be considered by Cabinet prior to the election.
10. As part of the wider NZ ETS reforms, Cabinet has also already made regulations on limits and price controls for the NZ ETS. Those regulations were considered by LEG on 31 July 2020 and have since been notified in the Gazette [LEG-20-MIN-0125 refers]. This

timing was to provide certainty for the market, and to ensure regulations were in place to enable auctions to start on time in early 2021 [2020-B-06643 refers].


High level summary of Cabinet paper

11. This paper addresses regulatory proposals that will determine the specific rules for auctioning, and clarifies some of the more technical rules.
12. Regulatory proposals will cover:
 - when auctions are held
 - auction volumes and price controls (as per previous NZ ETS settings regulations)
 - auction notices and information
 - registration of bidders
 - how auctions are run
 - how auction results are determined
 - settlement of auction sales
 - publication of auction results.
13. The paper notes several minor and technical clarifications required to implement previous policy decisions in the regulations. These include:
 - the specific definitions to apply to calculate the amount of collateral to be withheld upon failure to settle
 - the rounding method to apply to ensure that the number of units for sale at any one auction is rounded to the minimum lot size
 - that for the bidding window to be 'open' between 9:00 am and 12:00 pm, only very limited technical outages are permitted (less than 5 minutes at a time with a cumulative limit of 15 minutes), and no outages in the final half hour of the auction.
14. The Cabinet paper does not include regulatory proposals relating to the functions of the auction monitor, despite some policy decisions already being made.

Auction monitor regulations will be drafted later

15. Further policy decisions are required to prescribe a method or process for the auction monitor to be appointed under section 30GD(2)(a) of the CCRA. 9(2)(h)

16. We will include all regulatory proposals for the auction monitor in a Cabinet paper to be drafted in 2021 following further consultation on the appointment process. We are concurrently progressing work to appoint an interim auction monitor for the first auction [briefing 2020-B-06779 refers].

The paper does not include regulations to set a technical reserve price

17. This Cabinet paper also does not include regulations to set a technical reserve price as part of the detailed rules for how an auction should be run. Cabinet had decided to implement a technical reserve price as one of the rules for auctioning. The technical reserve price is designed to protect against the risk of NZUs being sold at a significantly lower price than the prevailing secondary market price for any one individual auction.
18. 9(2)(h)


9(2)(h)

19. 9(2)(h)

we recommend reconsidering the need to amend the CCRA to enable a technical reserve price next time this Act is being amended for other purposes.

Consultation feedback

20. The MFE legal team are satisfied the paper meets necessary legal requirements, subject to completion of the drafting for the regulations, which is currently underway.
21. We will begin agency consultation on the Cabinet paper shortly.

Risks

22. If not authorised and gazetted prior to the election then these regulations may not come into effect in time for the first scheduled auction on 17 March 2021. The three month stand-down period in the CCRA and the caretaker convention post-election may mean Cabinet decisions cannot be taken before the end of the year. If this occurs then the first auction would have to be postponed, leading to market uncertainty.
23. Without regulations to enable a technical reserve price to be set there is a risk that the clearing price for an auction may be lower than the prevailing secondary market price. However we consider the risk of this occurring is low on balance. Experiences of other emissions trading schemes operating with a technical reserve price, or an equivalent price control mechanism, show that it is rarely invoked. The secondary market will continue to provide the most influential price signal for bidders.
24. Due to tight timelines, Ministerial consultation has been reduced from 10 to 5 days to ensure that Cabinet decisions can be brought forward. We recommend notifying your colleagues of the truncated Ministerial consultation to ensure this process goes smoothly.

Next Steps

25. Please review the Cabinet paper and provide feedback by Monday 7 September 2020.
26. We will incorporate your changes into an updated Cabinet paper for consultation with your Ministerial colleagues. The paper is due to be lodged on Thursday 17 September 2020 for consideration at the Cabinet Business Committee meeting on Monday 21 September 2020.

Recommendations

27. We recommend that you:

- a) **Note** this paper is largely procedural and seeks authorisation for the rules for auctioning agreed to by Cabinet on 23 March 2020
- b) **Note** if these regulations are not authorised and gazetted prior to the election then they may not come into effect in time for the first scheduled auction on 17 March 2021
- c) **Note** all regulatory proposals for the auction monitor will be included in a Cabinet paper to be drafted in 2021, following consultation on the regulatory proposals for a process to appoint the auction monitor
- d) **Note** that this paper does not include regulations to set a technical reserve price, 9(2)(h)
- e) **Provide** feedback on the draft Cabinet paper by Monday 7 September 2020

Yes/No

- f) **Agree** that this briefing and appendices will be released proactively on the Ministry for the Environment's website within the next eight weeks.

Yes/No

Signature

Matthew Cowie
Director – Climate Change
Ministry for the Environment

Date

Hon James Shaw
Minister for Climate Change

Date

Appendix 1 - Climate Change (Auctions, Limits and Price Controls for Units) Regulations 2020 (Draft)