

**EXPLANATORY MEMORANDUM TO THE  
CLIMATE CHANGE LEVY (MISCELLANEOUS AMENDMENTS)  
REGULATIONS 2005**

**2005 No. 1716**

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

2.1 The instrument:

- (a) changes the way in which climate change levy (CCL) exclusions, exemptions and the half-rate are given effect, and
- (b) reduces certification and other formalities from combined heat and power stations that only supply their electricity direct to the consumers or use it themselves.

2.2 It also makes consequential, associated and transitional amendments.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

3.1 Regulation 8 introduces words of elucidation to the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001 (S.I. 2001/7) in line with paragraph 7 of the Committee's First Report of Session 2000-2001 ordered to be printed 27th February 2001 (see [www.publications.parliament.uk/pa/cm200001/cmselect/cmstain/288/288-i03.htm#a2](http://www.publications.parliament.uk/pa/cm200001/cmselect/cmstain/288/288-i03.htm#a2)).

3.2 A copy of the Combined Heat and Power Quality Assurance Standard referred to in regulation 7(1) was provided with the draft Climate Change Levy (Combined Heat and Power Stations) Regulations 2005 in March 2005 (see Committee's Third Report of Session 2004-2005 ordered to be printed 5th April 2005, available at [www.publications.parliament.uk/pa/cm200405/cmselect/cmstain/217-iii/21702.htm](http://www.publications.parliament.uk/pa/cm200405/cmselect/cmstain/217-iii/21702.htm)). The Standard is available at [www.chpqa.com](http://www.chpqa.com).

4. **Legislative Background**

*Exclusions, exemptions, half-rate*

4.1 CCL exclusions and exemptions, and the half-rate, for supplies of a particular commodity are given provisional effect on the basis of a unified estimate certified by the consumer to the supplier. The consumer must review the estimate at least annually. If the estimate was too high, the consumer had a number of options for correcting the excess relief obtained. If the estimate was too low, the consumer could obtain a tax credit. The legislation is in the Climate Change Levy (General) Regulations 2001 (S.I. 2001/838, regulation 2(1) of which provides that "the Act" refers to Schedule 6 to the

Finance Act 2000 (c. 17)) Part III and Schedule 1.

4.2 The Finance Act 2003 section 190 (to have effect as of 22nd July 2005 under S.I. 2005/1713 (C.72)) and section 192 amended the CCL primary legislation in the Finance Act 2000 Schedule 6 so that the arrangements could be simplified. The instrument exercises for the first time the powers provided by the latter section.

4.3 Accordingly regulation 5 of the instrument extensively amends Schedule 1 to S.I. 2001/838. Most of the amendments are consequential, associated or transitional. Regulations 5(e), 5(g) to (k), 5(m), 5(p) and 5(r) contain new, substantive provisions.

4.4 Regulation 5(e) deals with consumers whose estimate is too high. They are liable to be registered by HM Revenue & Customs for CCL in order to pay the excess relief as levy due. Regulation 5(e) enables HM Revenue & Customs to exempt such a consumer from registration if the amount due is paid (and regulation 2 places similar record-keeping duties on the consumer as apply to a registrable business).

4.5 Regulations 5(g) to (k) deal with consumers whose estimates are too low. They are able to enjoy the benefit of their tax credit earlier than before. This is because the tax credit no longer has to be assimilated into the consumer's estimate for the exclusions, exemptions and the half-rate for the subsequent period.

4.6 Regulation 5(m) is related to the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005 (S.I. 2005/1714, to come into force on 22nd July 2005). A combined heat and power station operator must now separately review the estimate for supplies of generation fuel to the station soon after the station's annual efficiency is known. If that part of the estimate was too high, the ordinary rules apply as described in paragraphs 4.1 and 4.4. If that part of the estimate was too low, the usual tax credit rules apply as mentioned in paragraphs 4.1 and 4.5.

4.7 Regulation 5(p) takes the opportunity to provide for express continuity for these CCL purposes should a supplier change otherwise than at the consumer's behest. The continuity depends on the relevant CCL documents being transferred to the new supplier.

4.8 Regulation 5(r) sets a maximum 5-year limit on the validity of the certificates delivered to suppliers for these purposes.

4.9 Regulations 4 and 5(b)(ii) are associated with the Climate Change Levy (Fuel Use and Recycling Processes) Regulations 2005 (S.I. 2005/1715, to come into force on 22nd July 2005). The new exemption for supplies to recycling processes in regulation 4 of and Schedule 2 to those Regulations are brought within the general scheme described in paragraph 4.1.

4.10 Most of the remainder of regulation 5 (plus regulations 3 and 6) make consequential, associated or transitional amendments. These mainly relate to the description in paragraph 4.4 about the consumer paying the amount of over-estimates direct to HM Revenue & Customs without having to be registered for CCL.

#### *Electricity from combined heat and power stations*

4.11 Regulation 7(2) reduces certification and other formalities in the case of

combined heat and power stations that only supply their electricity direct to the consumers or use it themselves. The certification and other formalities arise from the Climate Change Levy (General) Regulations 2001 (S.I. 2001/838) Part IV(A) and Schedule 2 (introduced by S.I. 2003/604). Regulation 7(11) provides the relevant transitional provisions.

4.12 The remainder of regulation 7 takes the opportunity to make amendments requiring certification of electricity from other combined heat and power stations to be undertaken on an objective basis and in accordance with the correct metering standards.

#### *EU legislation*

4.13 The instrument builds on or modifies arrangements put in place at the inception of CCL in April 2001 and therefore does not of itself implement Article 6 or any other Article of Council Directive 2003/96/EC (taxation of energy products and electricity) (OJ No L 283, 31.10.03, p 51).

### **5. Extent**

This instrument applies to all of the United Kingdom.

### **6. European Convention on Human Rights**

Statement not required.

### **7. Policy background**

7.1 The imposition of CCL is part of the United Kingdom's effort to combat climate change and play its part in the European Community's obligations under the Kyoto Protocol. The Protocol aims to reduce emissions of six greenhouse gases from developed countries between 2008-2012 by at least 5 per cent below 1990 levels. The European Union and its member States agreed to a burden-sharing agreement of an 8 per cent reduction in greenhouse gas emissions by 2012. As part of this agreement the United Kingdom has taken on a reduction of 12.5 per cent.

#### *Combined heat and power stations*

7.2 CCL always afforded favourable treatment to encourage "Good Quality" combined heat and power development and operation.

7.3 Many operators found it difficult or impossible to take advantage of the CCL exemption for supplies of fuel to the station in the current calendar year because that exemption was linked to the station's performance assessment for the previous calendar year under the Combined Heat and Power Quality Assurance scheme. Administrative arrangements were put in place in 2002 to alleviate the situation.

7.4 S.I. 2005/1714 (to come into force on 22nd July 2005) links the exemption to actual performance in the current calendar year. This instrument gives effect to that exemption by enabling it to be provisionally made available by the supplier during the current calendar year on the basis of the consumer's estimate, with reconciliation by the consumer once the station's actual performance in that calendar year is known.

7.5 The CCL relief for supplies of electricity directly from combined heat and power stations was extended on 1st April 2003 to indirect supplies of that electricity made by utilities via public distribution channels. The extension required operators to have their electricity officially certified and to undertake record keeping and other assurance formalities.

7.6 The certification requirements and other formalities are now removed for stations that only make direct supplies or put the electricity to own use. This is because such stations may safely be governed by the original arrangements. Certification for other stations continues on an objective basis.

#### *Exclusions, exemptions, half-rate*

7.7 Consumers that over-certify to suppliers their overall CCL entitlement to exclusions, exemptions and the half-rate have always had to make good the difference, but have been faced with a variety of ways to do so.

7.8 The position is now simplified so that HM Revenue & Customs may allow such a consumer to pay the sum due direct to them and so avoid CCL registration. The CCL rules about business' record keeping will apply. The exemption for supplies of fuel to combined heat and power stations is similarly provided for, but as a discrete item.

7.9 The new exemption for supplies used in recycling processes are brought within the general arrangements.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is absorbed within existing practices and there is no overall net cost to the Exchequer.

## **9. Contact**

Eddie Beasley at HM Revenue & Customs Tel: 0161 827 0913 or e-mail [eddie.beasley@hmrc.gsi.gov.uk](mailto:eddie.beasley@hmrc.gsi.gov.uk) can answer any queries regarding the recycling processes parts of the instrument.

David Godfrey at HM Revenue & Customs Tel: 0161 827 0335 or e-mail: [dave.godfrey@hmrc.gsi.gov.uk](mailto:dave.godfrey@hmrc.gsi.gov.uk) can answer any queries regarding the remainder of the instrument.