

2005 No. 641

ELECTRICITY

The Fossil Fuel Levy (Scotland) Amendment Regulations 2005

Made - - - - *12th December 2005*

Laid before the Scottish Parliament *15th December 2005*

Coming into force - - *1st April 2006*

The Scottish Ministers, in exercise of the powers conferred by sections 33 and 60 of the Electricity Act 1989(a), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Fossil Fuel Levy (Scotland) Amendment Regulations 2005 and shall come into force on 1st April 2006.

Amendment

- 2.—(1) The Fossil Fuel Levy (Scotland) Regulations 1996(b) are amended as follows.
(2) For regulations 2 to 8 substitute—

“Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires—
“the 2005 Order” means the Electricity from Non-Fossil Fuel Sources (Scotland) Saving Arrangements Order 2005(c);
“the Act” means the Electricity Act 1989;
“Amount” has the meaning given in regulation 5;
“auditor’s certificate” means a statement given by—
(a) in relation to a company within the meaning of the Companies Act 1985(d), the auditor or auditors (as holding office for the time being in accordance with that Act) of that company; and
(b) in relation to any other description of person, a person who is a member of one or more of the following bodies—

(a) 1989 c.29. Notwithstanding its repeal by section 66 of the Utilities Act 2000 (c.27), section 33 continues to have effect in Scotland by virtue of article 11 of the Non-Fossil Fuel Sources Saving Arrangements Order 2000 (S.I. 2000/2727). The definition of “prescribed” can be found in section 64(1) of the Electricity Act 1989. Section 33 was amended by S.I. 1997/1185, the Fossil Fuel Levy Act 1998 (c.5), section 1 and by S.I. 2001/3269 and was amended in relation to Scotland by S.S.I. 2002/92 and S.S.I. 2005/549. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1.

(b) S.I. 1996/293 as amended by S.I. 1996/1512, S.S.I. 2001/335 and S.S.I. 2002/94.

(c) S.S.I. 2005/549.

(d) 1985 c.6.

- (i) the Institute of Chartered Accountants of Scotland;
- (ii) the Institute of Chartered Accountants in England and Wales;
- (iii) the Chartered Association of Certified Accountants;
- (iv) the Institute of Chartered Accountants in Ireland;

“the Authority” has the meaning given in section 1 of the Utilities Act 2000(a);

“banking day” means a day on which banks are generally open in the City of Edinburgh excluding Saturdays or Sundays;

“business” means the activities of the nominated person which are carried out pursuant to the 2005 Order;

“climate change levy” means the climate change levy as defined in section 30 of and Schedule 6 to the Finance Act 2000(b);

“costs cap” for the period from 1st April 2006 to 31st March 2007 means £1,645,000 and for each subsequent twelve month period beginning on 1st April means the figure for the costs cap in the immediately preceding period multiplied by the ratio of the arithmetic mean of the Retail Price Indices (all items) published by the Office of National Statistics and published in respect of each of the months in the latest calendar year ending before 1st April and the arithmetic mean of the Retail Price Indices (all items) published by the Office of National Statistics and published in respect of each of the months in the year prior to such latest calendar year;

“data”, except in regulation 32, includes assumptions and estimates;

“debt recovery procedure” means a procedure established in accordance with regulation 5A with the aim of ensuring the prompt collection of debts owed to the nominated person in relation to the business;

“distribution system” means electric plant operated by a licensed distributor;

“levy” means the levy imposed by these Regulations;

“levy payment date” in relation to any month after March 2006 means the fifth banking day of each qualifying month and the first levy payment date shall be 7th April 2006;

“licensed distributor” means an electricity distributor as defined in section 6(9) of the Act (as inserted by section 30 of the Utilities Act 2000);

“licensed generator” means a person authorised by a licence to generate electricity;

“licensed supplier” means an electricity supplier as defined in section 6(9) of the Act (as inserted by section 30 of the Utilities Act 2000) who supplies customers in Scotland;

“licensed transmitter” means a person authorised by a licence to transmit electricity;

“nominated person” means the person who was nominated by the supply successor companies in compliance with article 3 of the 2005 Order and approved by the Scottish Ministers under article 5 of the 2005 Order unless approval of that person has been withdrawn by the Scottish Ministers in which case it means the person approved by the Scottish Ministers under article 5 of the 2005 Order;

“prescribed interest rate” means a rate which is 4 per centum per annum above the base rate of Royal Bank of Scotland plc current from time to time;

“public electricity supplier” means a person who, prior to 1st October 2001 was authorised by a licence to distribute electricity under section 6(1)(c) of the Act (as that provision had effect immediately before the coming into force of section 30 of the Utilities Act 2000) and whose “authorised area” (as defined in section 6(9) of the Act as that provision had effect immediately before the coming into force of section 30 of the Utilities Act 2000) was situated wholly or mainly in Scotland;

(a) 2000 c.27.
(b) 2000 c.17.

“qualifying month” in relation to the nominated person means a month beginning on or after 1st April 2006;

“rate of levy” means the percentage figure from time to time produced by the method set out in regulation 6;

“relevant interest payments” means—

- (a) interest payments made pursuant to regulation 24(1); and
- (b) interest payments in respect of money invested pursuant to regulation 25;

“relevant period” in regulation 5 means—

- (a) in relation to the symbol “C”, the qualifying month in which the levy payment date falls;
- (b) in relation to the symbol “A”, the period commencing on and including the second banking day prior to the previous levy payment date and ending on and including the third banking day prior to the levy payment date in relation to which the calculation of the Amount is being made; and
- (c) in relation to the symbols “a”, “ii” and “io”, the qualifying month preceding the month in which the levy payment date falls, save that for the first levy payment date and in relation only to the symbols “a” and “io”, the period commencing on 1st December 2005 and ending on 31st March 2006;

“supply successor company” means a person who became the holder of a supply licence under section 6(1)(d) of the Act on 1st October 2001 by virtue of a licensing scheme made in relation to a public electricity supplier under Part II of Schedule 7 to the Utilities Act 2000 or who became a supply successor company by virtue of article 8(3) of the 2005 Order;

“unit” means a measure of electrical energy equal to one kilowatt-hour,

and expressions which are used in section 32 of the Act(a) or section 33 of the Act(b) shall have the same meanings in these Regulations as in those sections save where the context requires otherwise.

(2) In these Regulations, unless the context otherwise requires—

- (a) any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations;
- (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the regulation or the Schedule in which the reference occurs;
- (c) any reference to the Schedule is a reference to the Schedule to these Regulations;
- (d) any reference to the manner in which an amount has been calculated is a reference to—
 - (i) the data used in calculating the amount in question;
 - (ii) the manner in which the data has been used in the calculations;
 - (iii) the source from which that data has been derived; and

(a) Section 62 of the Utilities Act 2000 (c.27) substituted a new section 32 of the Electricity Act 1989 for the section 32 which was originally enacted, and sections 63 to 65 inserted new sections 32A to 32C which have been amended by sections 115, 116, 118 and 119 of the Energy Act 2004. Section 32BA of the Electricity Act 1989 was inserted by section 117 of the Energy Act 2004. The functions of the Secretary of State, as regards sections 32 and 32A were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc. (No. 2) Order 2000 (S.I. 2000/3253), article 3. The functions of the Secretary of State in respect of sections 32B and 32C of the Electricity Act 1989 and section 67 of the Utilities Act 2000 were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2001 S.I. 2001/3504) article 2.

(b) Notwithstanding its repeal by section 66 of the Utilities Act 2000 (c.27), section 33 continues to have effect in Scotland by virtue of article 11 of the Non-Fossil Fuel Sources Saving Arrangements Order 2000 (S.I. 2000/2727). The definition of “prescribed” can be found in section 64(1) of the Electricity Act 1989. Section 33 was amended by S.I. 1997/1185, the Fossil Fuel Levy Act 1998 (c.5), section 1 and by S.I. 2001/3269 and was amended in relation to Scotland by S.S.I. 2002/92 and S.S.I. 2005/549. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1.

- (iv) the arithmetical processes of the calculation; and
- (e) any reference to leviable electricity is to leviable electricity supplied to customers in Scotland.

IMPOSITION OF LEVY

Imposition of levy

3. Each licensed supplier shall pay a levy in respect of each qualifying month in accordance with the following provisions of these Regulations.

PRESCRIBED PERSON AND METHODS

Collector etc of levy: prescribed person

4. The Authority is hereby prescribed as the person to collect payments from licensed suppliers in respect of the levy and to make payments to the nominated person and he shall also collect payments from the nominated person pursuant to section 33(5A) of the Act.

Payments in respect of levy etc: prescribed methods

5.—(1) In relation to a levy payment date the method of calculating the amount of the payment required to be made by either section 33(5) or 33(5A) of the Act (“the Amount”) is as described in this regulation.

(2) The Amount is the number which results from applying the formula in paragraph (3) together with any modification to that number which is made pursuant to paragraph (5).

(3) The formula is—

$$C - A + a - ii + io - x + y + z$$

where—

“C” is the aggregate payments paid or due to be paid by the nominated person in the relevant period pursuant to or otherwise arising from qualifying arrangements (to the extent not already taken into account in the calculation of the Amount for a previous levy payment date);

“A” is the aggregate payments received by the nominated person during the relevant period in relation to sales of electricity or rights relating to electricity generated pursuant to qualifying arrangements;

“a” is, subject to paragraph (4), the costs (other than interest) reasonably incurred by the nominated person in relation to the business in the relevant period;

“ii” is interest received by the nominated person in the relevant period on any sums held by him in relation to the business;

“io” is interest paid by the nominated person in the relevant period on borrowings made by him in order to enable him to conduct the business efficiently provided that the interest rate with reference to which such interest is calculated does not exceed the prescribed interest rate;

“x” is zero unless the Authority has determined an amount in accordance with paragraph (6), in which case “x” is that amount;

“y” is zero unless an amount is due to be paid on the levy payment date pursuant to regulation 23(4) and (5), in which case “y” is that amount; and

“z” is zero unless the Authority has determined any amount in accordance with paragraph (7), in which case “z” is the aggregate of any such amounts.

(4) The costs of the nominated person may only be included in item “a” above to the extent that those costs in the relevant period when added to the sum included as item “a” in the above calculation in each of the eleven months prior to the relevant period do not exceed the costs cap. Having so calculated, such costs incurred in the relevant period in excess of the costs cap may not be included in “a” in calculations of the Amount in relation to any future levy payment date.

(5) Additions to or subtractions from the number resulting from the application of the formula in paragraph (3) may be made to reflect—

- (a) sums received or paid by the nominated person in relation to the items listed in paragraph (3) in order to correct or update figures given for payments or receipts in relation to those items in relation to any previous levy payment date; or
- (b) over or underpayments where the procedures in regulation 37 have been followed.

(6) Where the Authority reasonably considers that the nominated person has not complied with the debt recovery procedure established in accordance with regulation 5A to a material extent in respect of a debt or debts, he may determine that an amount representing interest on any such outstanding debt or debts may be used as the figure for “x” in the formula in paragraph (3) for the purpose of calculating the Amount in relation to a particular levy payment date.

(7) Where, in relation to any previous levy payment date in calculating the Amount the Authority has determined that “x” should include a figure in connection with a particular debt owing to the nominated person, and the said debt has since been recovered by the nominated person in full, for the purposes of calculating the Amount on the levy payment date following such recovery of the debt the Authority shall determine an amount for inclusion in “z” which is equivalent to the aggregate of any figures included in “x” in relation to that debt in the calculation of the Amount on any previous levy payment date.

(8) Where the Amount is a positive number that number represents the amount which is required to be paid to the nominated person by section 33(5) of the Act in accordance with regulation 23.

(9) Where the Amount is a negative number that number represents the amount which is required to be paid by the nominated person to the person prescribed by section 33(5A) of the Act in accordance with regulation 36.

Debt Recovery Procedure

5A.—(1) The Authority shall, by 31st May 2006 and having first consulted the nominated person and the Scottish Ministers, determine a procedure with the aim of ensuring the prompt collection by the nominated person of debts owing to him in relation to the business.

(2) The debt recovery procedure shall include provisions to the following effect—

- (a) that the nominated person and the Scottish Ministers shall be consulted prior to any determination by the Authority being made under regulation 5(6);
- (b) that the interval between the making of the determination referred to in regulation 5(6) and the application of that determination on a levy payment date shall be at least one month;
- (c) that the sum representing interest referred to in regulation 5(6) in respect of any outstanding debt shall be calculated in respect of the period from the date on which the Authority reasonably considers that the nominated person failed to comply with the debt recovery procedure in relation to the debt to a material extent until the earliest of the following events—
 - (i) the debt is collected;
 - (ii) such time as the Authority reasonably considers that the nominated person has done all that is reasonable in order to comply with the procedure in relation to the debt; or

- (iii) such time as the Authority reasonably considers that the nominated person has done all that is reasonable to seek to recover the debt;
 - (d) that the interest rate to be applied in the calculation of the figure for “x” in regulation 5 shall not exceed (but where the Authority considers it appropriate it may be less than) the base rate of Royal Bank of Scotland plc current from time to time; and
 - (e) that the procedure may be amended at any time by agreement in writing of the Authority and the nominated person provided that the Scottish Ministers have been consulted before any such amendment takes effect.
- (3) The Authority and the nominated person shall comply with the debt recovery procedure.
- (4) In the event that there is a change in the identity of the nominated person, any new nominated person shall comply with the debt recovery procedure in the form it exists at the time the Scottish Ministers approve of such new nominated person until such time as that procedure is amended under paragraph (2)(e).

CALCULATION ETC OF RATE OF LEVY

Calculation and notification of rate of levy

6.—(1) From time to time the Authority shall calculate the rate of the levy in accordance with the method set out in paragraph (2) and the rate of the levy must be reviewed by the Authority according to that method at least once in any period of 12 months.

(2) In calculating or reviewing the rate of the levy the Authority shall take the following matters into account in relation to a period of time defined by him (which shall not exceed 12 months):—

- (a) the likely amount required by regulation 5 to be paid by or to the nominated person;
- (b) the likely aggregate amount of all interest payments to be paid pursuant to regulation 24(1) less the likely aggregate amount of all interest payments to be paid pursuant to regulation 24(2);
- (c) the amount of the administrative expenses of the Authority likely to be deducted and retained by him in accordance with regulation 23(2);
- (d) the aggregate amount of all interest payments likely to be received pursuant to regulation 25;
- (e) the aggregate amount of any money likely to be held or invested by the Authority having been received pursuant to these regulations; and
- (f) the aggregate amount (exclusive of the levy, value added tax and climate change levy) likely to be charged (whether or not a bill or invoice has been delivered to a customer) by licensed suppliers for leviable electricity supplied by them.

(3) At least 14 days before any notification under paragraph (4) is issued, the Authority shall consult the Scottish Ministers on the calculation or review of the levy rate and shall provide the Scottish Ministers with all assumptions, information and data upon which the calculation or review is based and the Scottish Ministers may make representations to the Authority in relation to the intended rate of the levy and the Authority shall take account of any such representations before issuing the notification referred to in paragraph (4).

(4) Having calculated or reviewed the rate of the levy the Authority shall notify the rate of the levy to the Scottish Ministers, the nominated person and each licensed supplier. Any change in the rate of the levy shall be notified to the above persons at least 3 months before the commencement of the qualifying month, or the first of the qualifying months, to which it applies.

(5) The Authority shall also notify the rate of the levy to the applicant for a licence under section 6(1)(d) of the Act at the time the licence is granted.

Publication of rate of levy

7. The Authority shall arrange for the publication of the rate of levy calculated by him in accordance with regulation 6 in such form and such manner as he considers appropriate for bringing it to the attention of consumers of electricity supplied by licensed suppliers.

CALCULATION OF QUANTITIES OF ELECTRICITY SUPPLIED

Contractual entitlements to electricity

8.—(1) In relation to supplies of electricity other than leviable electricity, where a licensed supplier is exclusively entitled under any agreement with the operator of a generating station specified, or of a description specified, in the agreement or with any person who is entitled to procure the delivery of electricity generated by any such station to direct the delivery to him or to a licensed distributor or to a licensed transmitter of all or part of the electricity generated by such station and—

- (a) a direction is given by or on behalf of the licensed supplier in or pursuant to that agreement requiring the delivery during a qualifying month of a quantity (specified in or calculated in accordance with the direction and being either the whole or a part less than the whole) of the electricity generated by that station;
- (b) the specified quantity of electricity is so generated and is delivered in accordance with such direction;
- (c) at the time of delivery it is not physically impossible for an amount of electricity equal to the specified quantity of electricity to have been conveyed from the station to the point of delivery or, as the case may be, in the aggregate to the points of supply; and
- (d) the licensed supplier supplies in the same qualifying month a quantity of electricity at least equal to the quantity specified in or calculated in accordance with his direction,

then, and subject to evidence of the above-mentioned matters being provided to the reasonable satisfaction of the Authority, and subject to regulations 9 and 10, for the purposes of these Regulations the licensed supplier shall be regarded as having supplied during that qualifying month a quantity of electricity other than leviable electricity generated by the generating station mentioned in paragraph (a) of this regulation equal to whichever is the lesser of the quantity mentioned in that paragraph and the quantity of electricity generated and delivered as mentioned in paragraph (b) of this regulation.

(2) In relation to supplies of leviable electricity, paragraph (1) shall apply as if it referred to leviable electricity instead of to electricity other than leviable electricity with the exception that evidence of the matters mentioned in sub-paragraphs (a) to (d) of paragraph (1) only need be provided to the Authority if he so requests.”.

(3) For regulations 11 and 12 substitute—

“Principal payments in respect of levy

11.—(1) Each licensed supplier shall make payments in respect of the levy in accordance with the following provisions of this regulation.

(2) In respect of each qualifying month, the licensed supplier shall calculate (and, in doing so, shall take into account any deductions which he may make in accordance with these Regulations) the amount of the payment due from him by applying the rate of levy notified to him by the Authority in accordance with regulation 6 to the aggregate amount (exclusive of the levy, value added tax and climate change levy) charged (whether or not a

bill or invoice has been delivered to a customer) by him for leviable electricity supplied by him.

(3) Not more than one month after the end of each qualifying month the licensed supplier shall make the payment which he has calculated to be due from him in respect of that month to the Authority.

(4) If the licensed supplier makes the payment mentioned in paragraph (3) later than one month after the end of the qualifying month in question but before any notice has been served on him under paragraph (1) of regulation 16 or 17, the licensed supplier shall also pay an amount in respect of interest in accordance with regulation 24(1).

Statements etc to accompany principal payments in respect of levy

12.—(1) At the same time as the licensed supplier makes a payment in accordance with regulation 11, and without prejudice to any other provision of these Regulations which requires the licensed supplier to furnish the Authority with any description of statement, information or other material, the licensed supplier shall furnish to the Authority a statement in accordance with this regulation.

(2) A statement in accordance with this regulation shall—

- (a) set out the manner in which the licensed supplier has calculated the amount of the payment mentioned in paragraph (1); and
- (b) without prejudice to the generality of sub-paragraph (a) of this paragraph, include the best estimate the licensed supplier can make (after taking into account the effect in relation to him of regulations 8 to 10 during the qualifying month in question) of the quantities (expressed in kilowatt hours) of—
 - (i) leviable electricity;
 - (ii) electricity other than leviable electricity;supplied by him during the qualifying month in question; and
- (c) set out the price per kilowatt hour at which the licensed supplier purchased the supplies of leviable electricity supplied by him during the qualifying month in question.

(3) With each statement in accordance with this regulation the licensed supplier shall also furnish to the Authority such evidence as may be available to him to justify the estimate mentioned in sub-paragraph (b) of paragraph (2) including (but without prejudice to the generality of the foregoing) evidence of the effect in relation to him of regulations 8 to 10 during the qualifying month.”.

(4) In regulations 13, 14, 16, 17 and 18, wherever “Director” appears, substitute “Authority”.

(5) In regulations 16(3), 17(3) and 18(2), omit “whichever of the periods specified in regulation 11(3)(a) and (b)” and insert “one month after the end of the qualifying month referred to in regulation 11(3)”.

(6) Omit regulations 15 and 19.

(7) For regulations 20 and 21 substitute—

“SUPPLY BELOW PURCHASE PRICE

Supply below purchase price: additional statements to be furnished to prescribed person

20.—(1) If, in the statement mentioned in regulation 12, the price at which the licensed supplier purchased leviable electricity exceeds the price at which such electricity was sold by him, the licensed supplier shall furnish the Authority with a statement setting out—

- (a) any price below the purchase price which the licensed supplier is charging for leviable electricity;

- (b) the manner in which that price has been calculated; and
- (c) any reasons which the licensed supplier may have to justify a belief on his part that it is appropriate in all the circumstances for amounts payable by him in respect of the levy to be calculated by reference to that lower price.

(2) The statement mentioned in paragraph (1) shall be furnished to the Authority at the same time as the licensed supplier furnishes him with the statement in accordance with regulation 12.

(3) The licensed supplier shall furnish the Authority with a further statement on each occasion when there is a change in any matter set out in the statement mentioned in paragraph (1).

(4) A statement under paragraph (3) shall set out the change which has taken place, and the reasons for that change.

Supply below purchase price: action by prescribed person

21.—(1) The Authority shall consider the matters set out in any statement furnished under regulation 20 and may require the licensed supplier to provide an auditor's certificate as to whether—

- (a) any price is set out in such statement; and
- (b) the manner in which that price has been calculated,

have been fairly stated and properly compiled.

(2) The Authority may also serve notice on the licensed supplier requiring him to provide further reasons justifying any price below the purchase price for electricity which the licensed supplier has set out in a statement under regulation 20.

(3) If the Authority does not accept that it is appropriate in all the circumstances for amounts payable by the licensed supplier in respect of the levy to be calculated by reference to any price being charged for electricity he shall, within 28 days of the date upon which he received the statement or (if requested) the auditor's certificate or further reasons, serve on the licensed supplier a notice under regulation 22A.

(4) The Authority may also by notice served on the licensed supplier require the licensed supplier to furnish him with a statement setting out—

- (a) any price which the licensed supplier is charging for any electricity;
- (b) the manner in which that price has been calculated; and
- (c) any reasons which the licensed supplier may have to justify a belief on his part that it is appropriate in all the circumstances for amounts payable by him in respect of the levy to be calculated by reference to that price,

and the Authority may also in like manner require the licensed supplier to provide an auditor's certificate that any calculation so furnished is fairly stated and properly compiled.

(5) If, after having regard to any statement furnished under paragraph (4), and to any auditor's certificate provided under that paragraph, the Authority considers that any price charged by the licensed supplier is less than the price which the Authority thinks it would be appropriate to charge for electricity, he shall serve on the licensed supplier a notice under regulation 22A.

(6) Any auditor's certificate required to be provided under this regulation shall be provided as quickly as is reasonably practicable and in any event not more than 60 days after the date of the Authority's request.”.

(8) After regulation 22 insert—

“Supply below purchase price: prescribed person’s notice

22A.—(1) Subject to paragraphs (2) to (4) a notice served by the Authority on a licensed supplier under this regulation shall set out—

- (a) the Authority’s reasons for not accepting that it is appropriate in all the circumstances for amounts payable by the licensed supplier in respect of the levy to be calculated by reference to any price charged during the qualifying month or months in question for electricity; and
- (b) the price which the Authority thinks it would be appropriate to charge for that purpose.

(2) When deciding what price to set out pursuant to sub-paragraph (b) of paragraph (1) in a notice under this regulation the Authority shall in particular have regard to—

- (a) the quantities of electricity being supplied by the licensed supplier;
- (b) load factors;
- (c) the voltage at which any supply is given;
- (d) the time of year and the time of the day at which any supply is given;
- (e) any conditions according to which a supply may be interrupted;
- (f) the location of customers receiving a supply from the licensed supplier;
- (g) the date and duration of any agreement under which any customer is receiving a supply from the licensed supplier.

(3) Any price set out pursuant to sub-paragraph (b) of paragraph (1) in a notice under this regulation served on a licensed supplier shall not be so high as to cause the average charge per unit treated as charged by that licensed supplier to exceed the maximum average charge per unit which he could make under the terms of his licence.

(4) No notice under this regulation in respect of a particular qualifying month may be served after the expiry of a period of 3 years commencing on the last day of the month in question.

Supply below purchase price: balancing payments in respect of levy

22B.—(1) Upon receipt of a notice under regulation 22A, the licensed supplier shall as quickly as practicable calculate the amount which would have been payable in respect of the relevant qualifying month, or each of the relevant qualifying months, if that amount had been calculated by reference to the price set out in that notice.

(2) As soon as he has completed the calculation mentioned in paragraph (1), the licensed supplier shall pay to the Authority an amount equal to the difference between—

- (a) the amount produced by that calculation; and
- (b) the amount already due in respect of the levy in respect of the relevant qualifying month, or each of the relevant qualifying months,

together with an amount in respect of interest in accordance with regulation 24(1).

(3) At the same time as he makes a payment in accordance with paragraph (2) the licensed supplier shall furnish to the Authority a statement of the manner in which he has calculated that payment.

(4) In this regulation “relevant qualifying month” means a qualifying month in respect of which the licensed supplier was due to make a payment pursuant to regulation 11 and in relation to which the Authority has served a notice under regulation 22A.

OVER-PAYMENTS IN RESPECT OF LEVY

Over-payments in respect of levy: action by licensed supplier

22C.—(1) If at any time any licensed supplier has reason to believe that the payment, or the aggregate of the payments, made in respect of the levy by him in respect of a qualifying month pursuant to these Regulations is greater than it should have been, he may serve notice on the Authority setting out—

- (a) his reason or reasons for the belief; and
- (b) the amount which he believes he should have paid and the manner in which that amount has been calculated.

(2) If the Authority wishes to question any matter set out in a notice served on him under paragraph (1), he shall do so by notice served on the licensed supplier within 28 days of receiving the notice served under paragraph (1).

(3) Any notice served under paragraph (2) shall set out in full the Authority's reasons for wishing to question any matter in the notice served on him under paragraph (1).

(4) If the Authority fails to serve a notice under paragraph (2) within the period mentioned in that paragraph, he shall be deemed to have accepted the notice served on him under paragraph (1) without question as to the amount (but without prejudice to the ability of the Authority subsequently to serve notice on the licensed supplier in accordance with regulation 17 in respect of the qualifying month in question) and the licensed supplier may then deduct the difference between the amount which he has paid and the amount set out in that notice (together with an amount in respect of interest in accordance with regulation 24(2)) from the next payment due from him under paragraph (3) of regulation 11.

(5) No notice under paragraph (1) may be served after the expiry of a period of 3 years commencing on the last day of the qualifying month in question.

Over-payments in respect of levy: action by prescribed person

22D.—(1) If at any time the Authority has reason to believe that the payment, or the aggregate of the payments, made in respect of the levy by a licensed supplier in respect of a qualifying month pursuant to these Regulations is greater than it should have been, he shall serve notice on the licensed supplier setting out—

- (a) his reason or reasons for the belief; and
- (b) after having regard to the information relating to the licensed supplier available to him at the time, the amount which he believes that the licensed supplier should have paid and the manner in which that amount has been calculated.

(2) If the licensed supplier wishes to question any matter set out in a notice served on him under paragraph (1), he shall do so by notice served on the Authority within 28 days of receiving the notice served under paragraph (1).

(3) Any notice served under paragraph (2) shall set out in full the licensed supplier's reasons for wishing to question any matter in the notice served on him under paragraph (1).

(4) If the licensed supplier fails to serve a notice under paragraph (2) within the period mentioned in that paragraph, he shall be deemed to have accepted the notice served on him under paragraph (1) without question as to the amount (but without prejudice to the ability of the Authority subsequently to serve notice on the licensed supplier in accordance with regulation 17 in respect of the qualifying month in question) and he may then deduct the difference between the amount set out in that notice and the amount which he has paid (together with an amount in respect of interest in accordance with regulation 24(2)) from the next payment due from him under paragraph (3) of regulation 11.

(5) No notice under paragraph (1) may be served after the expiry of a period of 3 years commencing on the last day of the qualifying month in question.

Over-payments in respect of levy: adjustments

22E. When any question arising from a notice served under paragraph (2) of regulation 22C or 22D has been resolved (whether by agreement between the Authority and the licensed supplier or otherwise)–

- (a) any payment found to be due from the licensed supplier in respect of the levy shall be made by him at the same time as he makes the next payment due from him under paragraph (3) of regulation 11; and
- (b) any amount found to be in excess of the proper amount of a payment made by the licensed supplier in respect of the levy may be deducted by him from the next payment due from him under paragraph (3) of regulation 11,

together, in each case, with an amount in respect of interest in accordance with regulation 24.”.

(9) Regulation 22 is amended as follows–

- (a) omit paragraph (1)(b);
- (b) in paragraph (1)(c), omit “19” and insert “22C”;
- (c) in paragraph (1)(d), omit “20” and insert “22D”;
- (d) in paragraph (1)(e), omit “21” and insert “22E”; and
- (e) in paragraphs (2)(b) and (3), for “Director” substitute “Authority”.

(10) For regulation 23 substitute–

“Application and distribution of levy

23.—(1) Payments received by the Authority in a qualifying month pursuant to these Regulations (with the exception of payments received by him pursuant to regulation 36(3)) shall be applied and distributed by him in accordance with this regulation.

(2) The Authority shall deduct and retain from the payments mentioned in paragraph (1) the amount of the administrative expenses incurred by him in respect of the qualifying month as the person prescribed by these Regulations for the purposes of section 33(1)(b) and (c) of the Act and in respect of his collection of payments from the nominated person pursuant to section 33(5A) of the Act.

(3) Where in relation to the levy payment date immediately after the end of the qualifying month mentioned in paragraph (1), the Authority has received a statement from the nominated person in accordance with regulation 36(1) and (2) which states that payment is due to be made to the nominated person pursuant to regulation 5(8), the payments mentioned in paragraph (1) less the amounts deducted under paragraph (2) shall, subject to paragraphs (4) and (5), be applied to the making of such payment on the levy payment date in relation to which such statement has been prepared.

(4) If any of the payments mentioned in paragraph (1) are not received by the Authority in time to be applied and distributed in accordance with the preceding provisions of this regulation, such payments shall, as soon as practicable after the payment mentioned in paragraph (3) has been made, be added in the appropriate amounts to the next payment due to be made under this regulation to the nominated person.

(5) For the purposes of paragraph (4), the appropriate amount as regards the payment mentioned in that paragraph in relation to the nominated person is an amount equal to the difference between–

- (a) the amount due to be paid to the nominated person under regulation 5(8); and
- (b) the payment actually made to the nominated person under paragraph (3).”.

(11) Regulation 24 is amended as follows–

- (a) in paragraph (1)(f), omit “21” and insert “22E”;
- (b) omit paragraph (2)(b);

- (c) in paragraph (2)(c), omit “19” and insert “22C”;
 - (d) in paragraph (2)(d), omit “20” and insert “22D”;
 - (e) in paragraph (2)(e), omit “21” and insert “22E”; and
 - (f) in paragraph (3), omit “whichever of the periods specified in regulation 11(3)(a) and (b)” and insert “the qualifying month referred to in regulation 11(3)”.
- (12) Regulation 25 shall be amended as follows–
- (a) in paragraph (1) for “Director” substitute “Authority”;
 - (b) in paragraph (2) omit “, until they are required for the making of payments pursuant to regulation 27,”; and
 - (c) in paragraph (3) omit “Building Societies Act 1986(a)” and insert “Financial Services and Markets Act 2000(b)”.
- (13) For regulation 26 substitute–

“Prescribed person’s records and accounts

26.—(1) The Authority shall keep separate records of–

- (a) all payments received by him pursuant to any of the preceding provisions (except regulations 24 and 25) of these Regulations;
- (b) all relevant interest payments received by him; and
- (c) all administrative expenses incurred by him in connection with the levy.

(2) The Authority shall maintain one or more bank accounts for all payments received by him pursuant to these Regulations, and shall keep such account or accounts separate from all other bank accounts maintained by him.

(3) The Authority shall send a statement of the amount standing for the time being to the credit of any such account as is mentioned in paragraph (2) to the Scottish Ministers and the nominated person at monthly intervals.

(4) The Authority shall also send a statement of the administrative expenses incurred by him in connection with the levy and of the costs of the nominated person (defined as “a” in regulation 5) to the licensed suppliers and the nominated person at intervals of not more than 6 months.

(5) Within 10 banking days of the end of each month the Authority shall also send to the Scottish Ministers a statement of aggregate levy receipts, relevant interest payments, the Authority’s administrative expenses and payments made to or received from the nominated person during that month.”.

(14) Omit regulation 27.

(15) For regulation 28 substitute–

“Provision of information to prescribed person

28.—(1) Subject to paragraph (2), and without prejudice to regulation 29, the Authority may by notice served on any person who is–

- (a) a licensed supplier;
- (b) a licensed transmitter;
- (c) a licensed generator;
- (d) the nominated person, or
- (e) a licensed distributor,

(a) 1986 c.53.
(b) 2000 c.8.

require that person to furnish, at such reasonable time and place as may be, and in the form and manner, specified in the notice, to the Authority such information of a description contained in the Schedule as may be specified in the notice.

(2) No person shall be required, when complying with a notice under paragraph (1), to give any information which he could not be compelled to give in evidence in civil proceedings in the Court of Session.

(3) Any person furnishing information to the Authority in accordance with a notice under paragraph (1) shall, if the notice so requires, provide an auditor's certificate that such information, or any such part of that information as may be specified in the notice, is fairly stated and properly compiled."

(16) In regulation 30–

- (a) wherever "Schedule 4" appears, substitute "the Schedule"; and
- (b) wherever "Director" appears, substitute "Authority".

(17) In regulation 31 wherever "Director" appears, substitute "Authority".

(18) For regulation 32 substitute–

"Retention and inspection of records

32.—(1) The nominated person, each licensed supplier, each licensed transmitter, each licensed distributor and each licensed generator shall retain for the prescribed period any relevant records.

(2) During the prescribed period the nominated person, each licensed supplier, each licensed transmitter, each licensed distributor and each licensed generator shall permit any person who is authorised in writing by the Authority for the purpose, on production of his authority, to inspect and to take copies of or extracts from any relevant records being retained pursuant to this regulation.

(3) In this regulation–

"prescribed period", in relation to any relevant records, means the period of five years commencing on the date on which information derived from those records is either–

- (a) in the case of a licensed supplier, first used by the supplier for the purpose of calculating or recalculating the amount of any payment due from him in respect of the levy; or
- (b) in the case of the nominated person, a licensed supplier, a licensed transmitter, a licensed distributor or a licensed generator, first furnished to the Authority pursuant to a notice under regulation 28;

"records" includes any document, book, computer program, print-out, tape, core, film, disk or other tangible data whatsoever and, in relation to any single item of information, means any one of them; and

"relevant records" means any records from which has been derived–

- (a) any information used by a licensed supplier for the purpose of calculating the amount of any payment due from him in respect of the levy; or
- (b) any information furnished to the Authority by the nominated person, a licensed supplier, a licensed transmitter, a licensed distributor or a licensed generator pursuant to a notice under regulation 28."

(19) Paragraph 34 is amended as follows–

- (a) In paragraph (1), for "Director" substitute "Authority";
- (b) In paragraph (1) after "each licensed transmitter" insert "each licensed distributor"; and
- (c) in paragraph (2)(a) after "licensed transmitter" insert "licensed distributor".

(20) Regulation 35 is amended as follows–

- (a) omit paragraph (3)(b);

- (b) in paragraph (3)(c), omit “19” and insert “22C”;
 - (c) in paragraph (3)(d) omit “20” and insert “22D”;
 - (d) in paragraph (3)(e), omit “21” and insert “22E”; and
 - (e) in paragraph (3), for “Director” substitute “Authority”.
- (21) For regulation 36 substitute—

“CALCULATIONS AND PAYMENTS BY THE NOMINATED PERSON

Calculations and payments to be made by the nominated person

36.—(1) In advance of each levy payment date the nominated person shall calculate the amount of any payment due to or from him in accordance with regulation 5 and shall provide the Authority with a statement setting out how the Amount referred to in regulation 5 has been calculated and including the figures used in calculating that Amount.

(2) The nominated person shall provide the Authority with the statement referred to in paragraph (1) on the banking day prior to the relevant levy payment date.

(3) Where in relation to any levy payment date the Amount is a negative number the nominated person shall pay that sum to the Authority on the fifth banking day after the levy payment date immediately following the date on which the statement referred to in paragraph (2) has been provided.

(4) If the nominated person makes the payment referred to in paragraph (3) later than the next levy payment date, at the discretion of the Authority in circumstances where the payment is late as a result of a banking or administrative error which has not been corrected by the nominated person as soon as reasonably practical following the discovery of the error, he may also be required to pay interest on that sum at a rate not exceeding the prescribed interest rate from the levy payment date on which such payment should have been made until such payment is actually made.

(5) In any case where the Authority determines that interest is payable under paragraph (4), the amount of such interest may not be included under any item listed in regulation 5 for the purposes of calculating the Amount on any levy payment date.

Over and under payments by the nominated person

37.—(1) In relation to any payments required to be made by the nominated person in accordance with regulation 36, regulations 16, 17 and 18 shall apply as if they referred to—

- (a) payments under regulation 36 (instead of regulation 11);
- (b) payments by the nominated person (instead of by the licensed supplier); and
- (c) interest payments under regulation 36(4) (instead of under regulation 24(1)).

(2) In relation to any payments required to be made to the nominated person in accordance with regulation 23, regulations 22C, 22D and 22E shall apply as if—

- (a) they referred to payments under regulation 23 (instead of regulation 11);
- (b) they referred to payments to the nominated person (instead of by the licensed supplier); and
- (c) there were no references to interest under regulation 24(2).

TRANSITIONAL ARRANGEMENTS

Transitional arrangements for supply successor companies

38.—(1) For the purposes of any payments to or from supply successor companies the entitlement to which accrued prior to 1st April 2006 (whenever such payments are actually made), these regulations shall continue to have effect as they did on 31st March 2006.

(2) These Regulations shall also continue to have effect as they did on 31st March 2006 in relation to any interest payments to be made to or from supply successor companies where the entitlement to such interest accrued after 1st April 2006 provided that such interest payments relate to payments the entitlement to which accrued prior to 1st April 2006.”.

(22) Omit Schedules 1, 2 and 3.

(23) Replace the title of “Schedule 4” with “The Schedule”.

(24) In the Schedule–

(a) at the end of paragraph 1(b) delete the word “and”;

(b) at the end of paragraph 1 insert the following–

“; and

(d) aggregate payments received or due to be received by the nominated person in relation to sales of electricity or rights relating to electricity generated pursuant to qualifying arrangements.”;

(c) in paragraph 3(f) after the words “value added tax” insert the words “,climate change levy”;

(d) in paragraph 3(g) after the words “value added tax” insert the words “and climate change levy”;

(e) paragraph 6 shall be replaced with the following–

“6. In the case of a licence under section 6(1)(d) of the Act granted after the coming into force of these Regulations, the date upon which the licence holder intends to start undertaking the activities authorised by the licence.”;

(f) in paragraph 8 after each reference to “transmission system” insert “or a distribution system”; and

(g) at the end of paragraph 14 insert–

“PART IV

15. Where requests for estimated figures are made under this Part IV, such requests must be reasonable and not unduly onerous on the nominated person.

16. Estimates or actual figures for any year or part of a year to be provided by the nominated person of–

(a) each of the items defined in regulation 5 as “C”, “A”, “a”, “ii”, “io”, “y” and the Amount and any sums included under paragraph (5) of that regulation in the calculation of the Amount;

(b) total quantities of electricity made available to the nominated person under qualifying arrangements and total quantities made available under each individual qualifying arrangement, measured by a meter installed for the purpose and expressed in kilowatt hours;

(c) the price per kilowatt hour at which the nominated person purchases electricity under each individual qualifying arrangement and the price at which he sells rights to such electricity; and

(d) information which the Authority may reasonably require in order to assess compliance by the nominated person with the debt recovery procedure, the 2005 Order and these Regulations.

17. Particulars of the manner in which estimates or actual figures provided pursuant to paragraph 16 have been calculated.”.

St Andrew's House,
Edinburgh
12th December 2005

ALLAN WILSON
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Fossil Fuel Levy Regulations 1996 (“the Principal Regulations”) (S.I. 1996/293). They come into force on 1st April 2006. Any reference in this note to a numbered regulation is a reference to the regulation bearing that number in the Principal Regulations. Regulations 2 to 8, 11, 12, 20, 21, 23, 28, 32 and 36 are substituted. Regulations 15, 19 and 27 are omitted.

There are various minor and consequential changes; however, the main changes of substance are to adapt the Principal Regulations following the introduction of the British Electricity Trading and Transmission Arrangements on 1st April 2005 and to make provision for payments out of levy to be made to a person nominated by the supply successor companies (“the nominated person”).

Regulation 2 provides for interpretation of the Regulations as amended.

Regulation 3 imposes the levy and Regulation 4 prescribes the Gas and Electricity Markets Authority (“the Authority”) as the person to collect payments from licensed suppliers and make payments to the nominated person.

Regulation 5 sets out the method of calculating the amounts to be paid to or by the nominated person pursuant to section 33(5) and (5A) of the Electricity Act 1989. This includes provision for the nominated person to be reimbursed his costs which are reasonably incurred in relation to the sale and purchase of electricity which has been generated pursuant to qualifying arrangements. Regulation 5A provides that the Authority is to determine a debt recovery procedure with the aim of ensuring the prompt collection of debts owed to the nominated person.

Regulation 6 re-expresses the method to be used by the Authority in calculating the rate of levy - the method is now set out in a narrative rather than formulaic manner, with the result that Schedules 1, 2 and 3 have been omitted. The method has also been modified to take into account the fact that payments out of levy are to be paid to (or may be received from) the nominated person.

Regulation 6 also includes a requirement on the Authority to calculate or review the levy rate at least once every 12 months. The Authority no longer has to calculate the rate of the levy with reference to a specific levy year (which previously commenced on 1st October each year). Before notifying licensed suppliers and the nominated person of the levy rate the Authority must consult the Scottish Ministers.

Regulation 7 provides for publication of the rate of levy.

Regulation 8 provides for quantities of electricity delivered pursuant to certain contracts to be treated as quantities supplied.

Regulations 11 and 12 restate the provisions for calculating the principal payments in respect of the levy and the statements which accompany the payments.

Regulations 15 and 19 have been omitted. Regulations 20, 21, 22A and 22B introduce provisions for the supply of leviable electricity below purchase price and the action to be taken by the Authority including provisions for the notice to be served on licensed suppliers by the Authority and calculating payments to effect a balance in respect of the levy.

Regulations 22C, 22D and 22E set out provisions for over-payments in respect of the levy and the action to be taken respectively by licensed suppliers and the Authority and how adjustments are made to the amount calculated to be paid.

Regulation 23 has been amended to make provision for payments to be made to the nominated person and for these payments to be made on the fifth banking day of each qualifying month.

Regulation 26 provides for the Authority to keep records and accounts of payments.

Regulations 28, 32 and the Schedule (which was previously Schedule 4) have been amended to impose information provision and retention requirements on the nominated person.

The original regulations 36 and 37 have been omitted. New regulation 36 makes provision for payments to be made by the nominated person to the Authority. New regulation 37 make provision for the correction of over and under-payments made to or by the nominated person.

Regulation 38 makes transitional provision for the Principal Regulations to be treated as not having been amended by these Regulations in relation to payments to supply successor companies where entitlement to those payments accrued to prior to 1st April 2006.

2005 No. 641

ELECTRICITY

The Fossil Fuel Levy (Scotland) Amendment Regulations 2005

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