

(Draft Regulations laid before Parliament under paragraph 146(3) of Schedule 6 to the Finance Act 2000, for approval by resolution of the House of Commons.)

DRAFT STATUTORY INSTRUMENTS

2001 No.

CLIMATE CHANGE LEVY

**The Climate Change Levy (Electricity
and Gas) Regulations 2001**

Made - - - - *2001*
Coming into force - - *1st April 2001*

The Treasury and the Commissioners of Customs and Excise, in exercise of the powers conferred on them by section 30 of and paragraphs 14(2), 146(1), 146(7), 151(2) and 152(2) of Schedule 6 to the Finance Act 2000⁽¹⁾, and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with paragraph 146(3) of that Schedule, been laid before Parliament and approved by a resolution of the House of Commons:

Citation and commencement

1. These Regulations may be cited as the Climate Change Levy (Electricity and Gas) Regulations 2001 and shall come into force on 1st April 2001.

Interpretation

2. In these Regulations—

“the Act” refers to Schedule 6 to the Finance Act 2000;

“CCL” refers to climate change levy;

“electricity supply licence” refers to a licence mentioned in paragraph 150(2)(a) or 150(2)(b) of the Act;

“gas” refers to gas described by paragraph 3(1)(b) of the Act;

“gas supply licence” refers to a licence mentioned in paragraph 150(3)(a) or 150(3)(b) of the Act.

(1) 2000 c. 17; paragraph 147 of Schedule 6 to that Act defines, for the purposes of that Schedule, “the Commissioners” as meaning the Commissioners of Customs and Excise.

Certain supplies by and to unregulated electricity suppliers and electricity utilities

3.—(1) An unregulated electricity supplier (within the meaning of paragraph 151(8) of the Act) shall be treated for all CCL purposes as being an electricity utility to the extent of any supplies he makes in relation to which he is in breach of a requirement to hold an electricity supply licence.

(2) A holder of an electricity supply licence, who receives supplies of electricity in the course of acting otherwise than for purposes connected with the carrying on of activities authorised by that licence, shall be treated as being an electricity utility for the purposes of the CCL treatment under paragraph 5 of the Act of the supplies of electricity so received.

(3) In paragraph (1), “unregulated electricity supplier” includes the holder of an electricity supply licence acting otherwise than for the purposes connected with the carrying on of activities authorised by that licence.

Certain supplies of electricity by electricity utilities

4.—(1) A person who is an electricity utility shall be treated for the purposes of the CCL chargeable under paragraph 5(1) of the Act (CCL on supplies of electricity) as not being an electricity utility to the extent of any part of a supply he makes of electricity—

- (a) produced in a fully exempt combined heat and power station, and
- (b) not supplied to him at any time by another person.

(2) Where an electricity utility makes a supply of electricity on which CCL would be chargeable, but for this paragraph, under both paragraph 5(1) and either paragraph 5(2) or 5(3) of the Act—

- (a) that electricity utility shall be treated, for the purposes of the CCL chargeable under paragraph 5(1), as not being an electricity utility to the extent of that supply, and
- (b) CCL shall, accordingly, only be chargeable on that supply under paragraph 5(2) or 5(3).

Supplies to exempt unlicensed electricity suppliers

5.—(1) The description of exempt unlicensed electricity supplier prescribed for the purposes of paragraph 14(2) of the Act (exemption: certain supplies to electricity producers) is that given in paragraph (2) of this regulation.

(2) The description referred to in paragraph (1) of this regulation is any exempt unlicensed electricity supplier who—

- (a) meets the description in paragraph 14(4) of the Act, and
- (b) is not an auto-generator.

Autogenerators: requirements for electricity produced to be taken as for own consumption

6. Electricity shall only be taken as produced primarily for a person’s own consumption for the purposes of paragraph 152(1) of the Act (autogenerators) if it fulfils both of the following requirements at the time it is produced—

- (a) it must not be produced by an electricity utility or by a person treated as such for the purposes of any supplies of electricity he makes;
- (b) it must not be produced by a person who has consumed, in the preceding 3 months, less than 75 per cent of the electricity produced by him in that period.

Certain supplies by and to unregulated gas suppliers and gas utilities

7.—(1) An unregulated gas supplier (within the meaning of paragraph 151(8) of the Act) shall be treated for all CCL purposes as being a gas utility to the extent of any supplies he makes in relation to which he is in breach of a requirement to hold a gas supply licence.

(2) An unregulated gas supplier (within the meaning of paragraph 151(8) of the Act) shall be treated for all CCL purposes as being a gas utility to the extent that any part of his supplies of gas fall within the exception provided for by paragraph 5 of Schedule 2A to the Gas Act 1986(2) (exception to prohibition on unlicensed activities for supplies to very large consumers).

(3) A holder of a gas supply licence, who receives supplies of gas in the course of acting otherwise than for purposes connected with the carrying on of activities authorised by that licence, shall be treated as being a gas utility for the purposes of the CCL treatment under paragraph 6 of the Act of the supplies of gas so received.

(4) A holder of a gas supply licence who is not an electricity utility, and who receives supplies of gas and uses that gas to produce electricity, shall be treated as being an electricity utility for the purposes of the CCL treatment under paragraph 5 of the Act of any supplies he makes of the electricity so produced.

(5) In this regulation, “unregulated gas supplier” includes the holder of a gas supply licence acting otherwise than for purposes connected with the carrying on of activities authorised by that licence.

Commissioner of Customs and Excise

March 2001

Two of the Lords Commissioners of Her
Majesty’s Treasury

(2) 1986 c. 44; Schedule 2A was inserted by the Gas Act 1995 (c. 45). Section 5 of the 1986 Act, substituted by the 1995 Act, prohibits certain unlicensed activities subject to the exceptions in Schedule 2A.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations make provision for the proper application of climate change levy (CCL) in sectors of the electricity and gas industries.
2. Regulation 3(1) treats supplies of electricity unlawfully made for not holding a supply licence as those of an electricity utility.
3. Regulation 3(2) treats supplies of electricity received by an electricity utility in the course of acting outside the scope of its supply licence as nevertheless received by an electricity utility.
4. Regulation 4(1) keeps a supply of electricity from a fully exempt combined heat and power station outside the charge to CCL when the supplier is an electricity utility.
5. Regulation 4(2) prevents CCL being charged under more than one provision when an electricity utility supplies electricity from a partly exempt combined heat and power station or burns electricity it has produced from taxable commodities.
6. Supplies of taxable commodities to electricity producers are exempt from CCL. However this does not apply to supplies to autogenerators or to exempt unlicensed electricity suppliers of a prescribed description. Regulation 5 prescribes for this purpose any exempt unlicensed electricity supplier who is not an auto-generator.
7. A person who produces electricity primarily for own consumption is an auto-generator for CCL purposes. Regulation 6 specifies that such production can only be primarily for own consumption if (a) it is not produced by an electricity utility, and (b) the producer has consumed at least 75 per cent of the output of the previous 3 months.
8. Regulation 7(1) treats supplies of gas unlawfully made for not holding a supply licence as those of a gas utility.
9. Supplies of gas to very large consumers may lawfully be made by a person who is not a gas utility. Regulation 7(2) treats such supplies as those of a gas utility.
10. Regulation 7(3) treats supplies of gas received by a gas utility in the course of acting outside the scope of its supply licence as nevertheless supplies received by a gas utility.
11. Regulation 7(4) treats supplies of electricity as nevertheless made by an electricity utility when the supplier (a) is not an electricity utility but is a gas utility, and (b) produces the electricity from supplies of gas received.
12. Treatment as or as not a utility under regulation 3(1), 3(2), 7(1), 7(2), 7(3) or 7(4) is for CCL purposes only.