STATUTORY INSTRUMENTS

2005 No. 1714

CLIMATE CHANGE LEVY

The Climate Change Levy (Combined Heat and Power Stations) Regulations 2005

Made - - - - 21st July 2005

Coming into force in accordance with regulation 1

The Treasury, in exercise of the powers conferred by section 30 of and Schedule 6, paragraphs 15(4), 16(2), 16(3), 146(7), 147, 148(4), 148(7), 148(8), 148(9), 149(1), 149(2) and 149(3) to the Finance Act 2000(**1**), 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:

Preliminary

1. These Regulations may be cited as the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005 and shall come into force on the day after the day on which they are made.

2.—(1) In these Regulations—

"the Act" refers to Schedule 6 to the Finance Act 2000(**2**);

"CCL" refers to climate change levy;

"CHPQA" refers to the Combined Heat and Power Quality Assurance Standard, Issue 1, November 2000 originally published by the Department for the Environment, Transport and the Regions (the "Standard") (including the later of version Final 1.0 or 2.0 of CHPQA Guidance Notes(**3**) 0 to 4 (including 2(S), 3(S) and 4(S)), 10 to 28 and 30);

"station" refers to a combined heat and power station or, in appropriate circumstances, to combined heat and power stations forming at least part of a single CHP Scheme.

(2) But, for the purposes of regulation 3(2), "CHPQA" refers to the current issue of that Standard and current versions of those and any subsequent Guidance Notes.

(**1**) 2000 c. 17; paragraphs 15, 148 and 149 are amended by the Finance Act 2003 (c. 14) sections 189 and 216 and Schedule 43 Part 4(2) in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint (about which, see S.I.2005/1713 (C. 72)).

(**2**) 2000 c. 17.

(**3**) CHPQA Guidance Notes are explained in Section 5.1 of the Standard.

An issue or version is current for these purposes to the extent that it is neither varied, replaced nor revoked by another issue or version.

(3) These Regulations must be applied in a way consistent with the CHPQA and paragraph (2).

But, for the purposes of regulations 3(2) and 4, any reference in the CHPQA to any relevant "registered" quantity (whether or not mentioned in either regulation) must be treated as a reference to the actual quantity of that name for determination and calculation in accordance with the CHPQA.

That determination and calculation must be on the basis of events in relation to the given station during the given Annual Operation (for "Annual Operation", see CHPQA Section 4 – 1st January to 31st December).

Supplies to combined heat and power stations: exemption for inputs

3.—(1) A station's threshold efficiency percentage is set as 20 per cent (see paragraphs 15(2)(b), 15(3)(b) and 15(4)(a) of the Act).

(2) A station's efficiency percentage for a given Annual Operation is its Power Efficiency in relation to that Operation (see paragraphs 15(4)(b), 149(1) and 149(2)(e) of the Act(**4**) and Section 5.6 of the Standard).

Supplies from partly exempt combined heat and power stations: exemption for outputs

4. The limit (see paragraph 16(2) of the Act) on the quantity of electricity that may be produced in and supplied from a partly exempt station exempt from CCL for a given Annual Operation is its CHP Qualifying Power Output in relation to that Operation (see Section 5.8 of the Standard).

Fully exempt combined heat and power stations: conditions to be satisfied for full-exemption certificate

5.—(1) The condition to be satisfied in relation to a station for the purpose of the Secretary of State giving a full-exemption certificate is as follows (see paragraph 148(4) of the Act).

(2) The station's Quality Index as determined and calculated in accordance with the CHPQA must at least meet the Threshold Quality Index Criterion specified for that station in the CHPQA (see Sections 5.5 and 4 of the Standard).

Transitional provisions: inputs efficiency percentage and outputs partly exempt limit

6.—(1) Paragraph (2) applies only if regulations 2(2) and 2(3) result in more than one issue of the Standard or version of a Guidance Note being current during the Annual Operation in question and, if they are treated as separately current for the whole Annual Operation, this yields different efficiency percentages for the purposes of regulation 3(2).

(2) The efficiency percentage in regulation 3(2) is then the weighted mean of those different efficiency percentages.

The weighting must reflect the proportion of fuel input to the station during the period in relation to which the relevant issue or version is current.

That proportion must be calculated relative to the station's actual total fuel input for the Annual Operation in question.

(**4**) Paragraphs 15 and 149 are amended by the Finance Act 2003 (c. 14) sections 189 and 216 and Schedule 43 Part 4(2) in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint (about which, see S.I. 2005/1713 (C.72)).

7.—(1) Paragraph (2) applies only if regulation 4 results in a limit ("A") for calendar year 2005 that is less than the limit ("B") that would have applied for that year under regulation 5(2) of the Climate Change Levy (Combined Heat and Power Stations) Prescribed Conditions and Efficiency Percentages Regulations 2001(**5**).

(2) The limit in regulation 4 for 2005 is then the following sum.

$$\left[\frac{X \times A}{365}\right] + \left[\frac{Y \times B}{365}\right]$$

X = 365 - Y
Y = the number of days elapsed for 2005 up to and including the day these Regulations are made.

Revocations

8. The Climate Change Levy (Combined Heat and Power Stations) Prescribed Conditions and Efficiency Percentages Regulations 2001 and the Climate Change Levy (Combined Heat and Power Stations) Prescribed Conditions and Efficiency Percentages (Amendment) Regulations 2003(**6**) are revoked.

Gillian Merron
Joan Ryan
Two of the Lords Commissioners of Her Majesty's Treasury

(**5**) S.I. 2001/1140, amended by S.I. 2003/861. Both instruments are revoked by regulation 8 of these Regulations.
(**6**) S.I. 2003/861.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations(**7**) relate to the reliefs from climate change levy (CCL) that may apply in the case of electricity produced in certified combined heat and power stations(**8**).

Input fuel to all certified stations

The exemption for supplies of leviable fuel *to* such stations is determined relative to an objective threshold efficiency percentage(**9**). Regulation 3(1) sets that threshold efficiency percentage as 20 per cent(**10**).

The actual amount of exemption depends on the ratio between a station's efficiency percentage and the relevant threshold efficiency percentage(**11**). Regulation 3(2) provides for a station's efficiency percentage in relation to a given calendar year to be determined in accordance with methodology described in detail in the Combined Heat and Power Quality Assurance Standard, Issue 1, November 2000 originally published by the Department for the Environment, Transport and the Regions (the Standard)(**12**), (**13**), (**14**).

Output electricity from partly exempt stations

Electricity may be supplied *from* partly exempt stations free from CCL, but only up to a specified limit. Regulation 4 specifies the current calendar year's annual limit as the station's CHP Qualifying Power Output in relation to that year in accordance with the Standard(**15**).

(**7**) Revoking and replacing S.I. 2001/1140 and S.I. 2003/861, and partly implementing Articles 6, 15.1(c) and 15.1(d) of Council Directive 2003/96/EC (OJ L 283, 31.10.03, p 51) (taxation of energy products and electricity). A transposition note is available from www.hmce.gov.uk .

(**8**) Certified for these purposes under the Finance Act 2000 (c. 17) Schedule 6 paragraphs 148(2) to 148(5), which are amended by the Finance Act 2003 (c. 14) sections 189 and 216 and Schedule 43 Part 4(2) in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint (about which, see S.I. 2005/1713 (C.72)).

(**9**) See the Finance Act 2000 (c. 17) Schedule 6 paragraph 15, which is amended by the Finance Act 2003 (c. 14) sections 189 and 216 and Schedule 43 Part 4(2) in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint (about which, see S.I. 2005/1713 (C.72)).

(**10**) This threshold is identical with the one established at the start of climate change levy on 1st April 2001 by S.I. 2001/1140 regulation 3(1). (A threshold of 15 per cent applied until 1st April 2005 for a station that on 1st November 2000 was solely operating a steam engine or steam turbine, see S.I. 2001/1140 regulation 3(2)). S.I. 2001/1140 is revoked by regulation 8 of these Regulations.

(**11**) See the Finance Act 2000 (c. 17) Schedule 6 paragraphs 15(2) to 15(4); paragraph 15 is amended by the Finance Act 2003 (c. 14) sections 189 and 216 and Schedule 43 Part 4(2) in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint (about which, see S.I. 2005/1713 (C.72)).

(**12**) Including the relevant Guidance Notes version Final 1.0 or 2.0. The Standard and Guidance Notes are available at http://www.chpqa.com or free of charge from the Action Energy Helpline (0800 585794) or the CHPQA Administrator (0870 190 6196).

(**13**) Regulation 3 of S.I. 2001/1140, revoked by regulation 8 of these Regulations, made similar but less up to date provision by linking a station's efficiency percentage to the most recent year's assessed output figures stated in its current CHPQA certificate.

(**14**) Regulations 2(2), 2(3) and 6 cater for updates to the CHPQA or Guidance Notes for the purposes of the efficiency percentage. Such provision is envisaged by the Finance Act 2000 (c. 17) Schedule 6 paragraph 149(2)(e).

(**15**) Regulation 5 of S.I. 2001/1140, revoked by regulation 8 of these Regulations, made similar but less up to date provision by linking a station's limit to a stated quantity on the CHPQA certificate for the most recent calendar year's assessment. Regulation 7 of these Regulations preserves any benefit from that arrangement for the part of calendar year 2005 preceding these new arrangements.

Condition for full-exemption certificate

A certified station is fully exempt or partly exempt for CCL purposes(**16**). Entitlement to a full-exemption certificate depends on prescribed conditions being satisfied(**17**).

Regulation 5 prescribes as a condition that the station's Quality Index measured in accordance with the Standard must at least meet a Threshold Quality Index Criterion specified by the Standard.

Regulatory impact assessment

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or voluntary bodies.

(**16**) See the Finance Act 2000 (c. 17) Schedule 6 paragraphs 148(2) and 148(3), which are amended by the Finance Act 2003 (c. 14) section 189 in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint (about which, see S.I. 2005/1713 (C.72)).

(**17**) See the Finance Act 2000 (c. 17) Schedule 6 paragraph 148(4)(b).