

EXPLANATORY MEMORANDUM TO
THE CLIMATE CHANGE LEVY (GENERAL) (AMENDMENT)
REGULATIONS 2013

2013 No. 713

1. Introduction

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

2. Purpose of the Statutory Instrument

This instrument amends the Climate Change Levy (General) Regulations 2001 (SI 2001/838) (“the principal Regulations”) as a consequence of: the introduction of a carbon price floor, which involves the introduction of new carbon price support rates (“CPS rates”) of climate change levy (CCL) on coal and other solid fossil fuels, gas and liquefied petroleum gas (LPG) used to generate electricity; and the change to the reduced rate of CCL to 10 per cent of the main CCL rate on electricity for supplies of electricity made to those businesses with climate change agreements. Both of these changes come into force on 1 April 2013.

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

It has not been possible to comply with the 21 day rule. This is because the instrument could not be made and laid until the resolution under the Provisional Collection of Taxes Act 1968 giving statutory effect to new paragraphs 24B(3), 24D, and 62(1)(ba), (bb) and (bc) of Schedule 6 to the Finance Act 2000 was passed by the House of Commons at the end of the debate on the 2013 Budget and the instrument has to come into force on 1 April 2013 at the same time as the carbon price floor is introduced.

4. Legislative context

4.1 The European Council Directive 2003/96/EC¹ (“the Directive”) on restructuring the Community framework for the taxation of energy products (gas, LPG, oils and solid fuels, such as coal) and of electricity establishes the general arrangements for the taxation of these products and electricity, including setting minimum tax rates for these products. While the Directive requires Member States to exempt energy products used in the generation of electricity from general taxation, it does allow them to tax such products for reasons of environmental policy. In addition, in the interests of protecting the environment, it authorises EU countries to grant tax advantages to businesses that take specific measures to reduce their emissions.

¹ OJ: L283, 31.10.2003, p51.

4.2 In relation to energy products other than oil, the United Kingdom (UK) implements this Directive through CCL, the main primary legislation for which is contained in Schedule 6 to the Finance Act 2000 (“Schedule 6”), as amended. Currently CCL levies a charge on supplies of energy products (other than oil, which is taxed under the fuel duty regime) and electricity to businesses and the public sector, but exempts a range of supplies, including supplies to persons who will use them to generate electricity. Schedule 6 also contains provisions for a reduced rate of CCL for participants in the climate change agreement scheme, which energy intensive businesses become eligible to pay if they enter into, and meet, emissions reductions or energy efficiency targets agreed with the Department of Energy and Climate Change.

4.3 Schedule 20 to the Finance Act 2011 (“FA 11”) and Schedule 32 to the Finance Act 2012 (“FA 12”) amended Schedule 6 to provide for CPS rates of CCL from 1 April 2013. Finance Act 2013 (“FA 13”) will make further amendments to Schedule 6 and consolidate all the primary legislation relating to the carbon price floor.

4.4 For coal and other solid fossil fuels, gas and LPG, the carbon price floor will be achieved in part by the introduction in FA 13 of deemed taxable self-supplies where these fuels are delivered to a generating station to be used in producing electricity in the station or to a combined heat and power (CHP) station and are referable to the production of electricity in the station. Such deemed supplies are liable to the CPS rates of CCL.

4.5 Part 3 of Schedule 30 to FA 12 amended Schedule 6 to provide that the reduced rate of CCL for climate change agreement participants would be amended to 10 per cent from 1 April 2013 on participants’ use of electricity.

4.6 These Regulations amend the principal Regulations as a result of the changes described in paragraphs 4.3 to 4.5.

4.7 The carbon price floor will also apply to oil used to generate electricity. However, oils are not subject to CCL and the price floor on oil-fired electricity will be achieved through separate secondary legislation covering changes to fuel duty (see the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendments for Carbon Price Support) Regulations 2013). That legislation also comes into effect on 1 April 2013.

5. Territorial extent and application

This instrument applies to all of the UK.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 In order to encourage new and additional investment in low-carbon power generation, the Government announced at Budget 2011, following consultation, that it would introduce a carbon price floor from 1 April 2013. Supplies of coal and other solid fossil fuels, gas and LPG used in most forms of electricity generation would become liable to newly created CPS rates of CCL, which would be different from the main CCL rates levied on consumers' use of these commodities (and of electricity). The amount of fuel duty reclaimable on oil used in electricity generation would be adjusted to establish new CPS rates of fuel duty. The Government believes that a carbon price floor will build upon the EU Emissions Trading System, which to date has not delivered a sufficiently high and stable carbon price to encourage the investment in low-carbon technology the UK needs to meet its legal obligations.

7.2 The carbon price floor will not apply in Northern Ireland. The exemption for Northern Ireland recognises concerns about the impact of the carbon price floor on energy security in Northern Ireland given the different market conditions that apply there as a result of the Single Electricity Market on the island of Ireland.

7.3 FA11 contained the initial primary legislation, including the CPS rates of CCL for 2013-14. Budget 2012 announced some changes, including that, to incentivise CHP, supplies of fossil fuels to CHP stations would only be liable to the CPS rates where they are referable to the production of electricity – fuels used to produce other outputs (mainly heat) would be exempt.

7.4 The changes made by this instrument will allow the Commissioners for HMRC to administer the CPS rates of CCL. It introduces a new Schedule which sets out: the calculation for determining the extent to which a quantity of coal and other solid fossil fuels, gas or LPG delivered to a CHP station is referable to the production of electricity in the station; a requirement to review that calculation based on the actual performance of the station; and provision for tax credits and further deemed supplies that may arise as a result of that review.

7.5 This instrument also amends the CCL relief formula in Schedule 1 of the principal Regulations to reflect the reduced rate of CCL in respect of a supply of electricity being set at 10 per cent of the main rates of CCL from 1 April 2013 for participants in the climate change agreement scheme. This change was announced at Budget 2012 as part of a package to help manufacturing and the most energy-intensive businesses to remain competitive during the shift to a low-carbon economy, by reducing the cost of electricity.

- ***Consolidation***

7.6 There is no present intention to consolidate the amendments that have been made to the principal Regulations.

8. Consultation outcome

8.1 A consultation on introducing a carbon price floor was released on 16 December 2010 and the Government's response to the consultation published on 30 March 2011. The key points of the response included:

- the floor would start at £16 per tonne of carbon dioxide and increase to £30 per tonne of carbon dioxide by 2020; and
- demonstration projects and commercial carbon capture and storage plants would receive relief from the carbon price floor equivalent to the proportion of carbon dioxide captured and stored rather than emitted.

8.2 As a result of continuing consultation throughout 2011 and 2012, a number of changes and clarifications were announced to the carbon price floor in December 2012 to meet industry concerns, in particular to incentivise CHP. These include:

- Qualifying supplies of coal and other solid fossil fuels, gas or LPG (excluding deemed supplies) to CHP stations registered under the CHP Quality Assurance (CHPQA) Programme will continue to be exempt from the main rates of CCL.
- The operator of a CHP station with a generating capacity above 2 megawatts will be liable to account for the CPS rates of CCL on the proportion of deemed supplies of coal and other solid fossil fuels, gas or LPG used to generate electricity.
- When calculating the generating capacity for a CHP station no account will be taken of other stations operated by the same person or any connected person. The generating capacity will be specific to each individual CHP scheme.
- CHP stations registered under the CHPQA Programme which burn oils will continue to be able to claim relief on qualifying supplies of oils. This relief will be reduced by the amount of the CPS rate in relation to the quantity of oil used to generate electricity.
- The proportion of the fuel input that is used to generate electricity will be calculated using the established boiler displacement method and will be shown on the station's CHPQA certificate.
- Output electricity from a good quality CHP station will remain outside the scope of CCL when subject to a self or direct supply. Such supplies will remain partially exempt if the CHP station does not meet good quality standards. The position for indirect supplies of electricity (those made via the Grid) was announced at Budget 2012.

8.3 The draft primary and secondary legislation relating to the carbon price floor was published in draft on 11 December 2012, resulting in minor technical changes.

9. Guidance

Six public notices covering CCL are available at www.hmrc.gov.uk. A new public notice which deals exclusively with the carbon price floor will be published in spring 2013.

10. Impact

10.1 Around 150 fossil fuel electricity generators embedded into the National Grid and a large number of small electricity generators will incur the CPS rates on the fuels that they burn. For CHP stations, the threshold below which they will not be liable for CPS rates of CCL will be based upon their generating capacity at the scheme level rather than at the person level. This threshold will remove around 450 CHP stations, owned by around 20 businesses, from these rates. This will result in the businesses affected not having to register for the CPS rates of CCL or make returns for these CHP stations.

10.2 The total one-off familiarisation and information technology costs and continuing administration burdens for the affected businesses are estimated to be negligible.

10.3 There is no impact on the public sector.

10.4 A Tax Information and Impact Note (TIIN) covering the carbon price floor was published on 11 December 2012 alongside draft Finance Bill 2013 legislation and draft secondary legislation, including this instrument. This has been updated by a further TIIN as a result of changes to the impacts as a result of this instrument and both TIINs are available on the HMRC website from the following link: <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is a general tax provision and the same for all firms.

11.3 The basis for the final decision on what action to take to assist small business is described in paragraphs 7.1 to 7.5 above, so no such action is taken for this general tax provision.

12. Monitoring and review

Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Excise, Environmental Taxes and Customs Directorate of HMRC.

13. Contact

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timothy.smith@hmrc.gsi.gov.uk can answer any queries regarding the instrument.