
STATUTORY INSTRUMENTS

2001 No. 838

CLIMATE CHANGE LEVY

The Climate Change Levy (General) Regulations 2001

<i>Made</i>	- - - -	<i>9th March 2001</i>
<i>Laid before the House of Commons</i>	- - - -	<i>12th March 2001</i>
<i>Coming into force</i>	- -	<i>1st April 2001</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by section 30 of and paragraphs 19(1), 19(3), 21, 22, 23(4), 27(7), 27(8), 29(7), 41(1), 41(2), 43(4), 43(5), 44(5), 62, 63(4), 65, 73, 74, 100(2), 100(3), 118, 119, 120, 125, 146(1), 146(4) and 146(7) of Schedule 6 to the Finance Act 2000⁽¹⁾, section 51 of the Finance Act 1997⁽²⁾, and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART I
PRELIMINARY

Citation and commencement

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

General interpretation

- 2.—(1) In these Regulations and the Schedule, except where the context requires otherwise—
- “the Act” refers to Schedule 6 to the Finance Act 2000;
 - “CCL” refers to climate change levy;
 - “excluded part”, “exempt part”, “half-rate part” and “reduced-rate part” refer, respectively, to that part of a supply of a taxable commodity that would, by itself, be excluded or exempt from CCL or would be a half-rate supply or a reduced-rate supply for CCL purposes;
 - “gas” refers to gas described by paragraph 3(1)(b) of the Act;

(1) 2000 c. 17; paragraph 147 of Schedule 6 to the Finance Act 2000 provides that “the Commissioners” means the Commissioners of Customs and Excise in that Schedule.
(2) 1997 c. 16.

“Part”, “regulation” or “regulations” refers to the appropriate Part, regulation or regulations of these Regulations;

“non-registrable electricity producer” refers to an electricity producer to whom a supply of a taxable commodity is not exempt under paragraph 14(1) of the Act (except in relation to uses of the electricity he produces for which that exemption is retained);

“published notice” refers to a notice published by the Commissioners and not withdrawn by a further notice;

“recipient” refers to the person to whom a supply of a taxable commodity is made;

“registrable person” refers to a person who is registered or required to be registered under Part V of the Act;

“Schedule” refers to the Schedule to these Regulations;

“supplier” refers to a person making a supply of a taxable commodity (but, in the case of regulations 11, 13 and 14, it only refers to the person who is liable to account for the CCL charged on the taxable supply in question (see paragraph 40(1) of the Act—suppliers, and paragraph 40(2) of the Act—supplies made by persons who are neither residents of the United Kingdom nor utilities));

“time of supply” refers to when a supply of a taxable commodity is treated as taking place by or under paragraphs 25 to 39 of the Act;

“working day” excludes Saturday, Sunday and any bank or public holiday.

(2) Where a provision of these Regulations requires the delivery of something to the Commissioners, it must be taken to include a requirement that delivery must be made to any address specified for the purpose in question by the Commissioners in a published notice.

PART II

ACCOUNTING, PAYMENT, RECORDS, TAX CREDITS, REPAYMENTS, SET-OFF, ETC.

Accounting periods

3.—(1) A registrable person shall be subject to accounting periods.

(2) In the case of a registered person, these shall be each three month period ending on the dates notified to him at any time by the Commissioners for this purpose.

(3) In the case of any other registrable person, these shall be each three month period ending on 31st March, 30th June, 30th September or 31st December.

(4) However, in a particular case, the Commissioners may vary the start, end and length of any accounting period.

Returns

4.—(1) A registrable person is obliged to make a return to the Commissioners covering each of his accounting periods.

(2) The registrable person is obliged to make that return no later than the last working day of the month immediately following the end of the period to which it relates.

(3) In the case of an accounting period that does not end on the last day of a month, the registrable person is obliged to make that return no later than the due day directed by the Commissioners.

(4) The Commissioners may allow the registrable person extra time in which to make that return.

(5) The registrable person must make that return in a form that is prescribed by the Commissioners in a published notice (“prescribed form”).

(6) The registrable person must make that return by securing that it is delivered either to the address prescribed by the Commissioners in a published notice or to any other address that they may direct or allow.

Content of returns

5.—(1) The registrable person must declare in the return the CCL due from him for the relevant accounting period, taking into consideration—

(a) the CCL due on taxable supplies—

(i) the time of supply of which is in that accounting period, and

(ii) for which he is liable to account;

and,

(b) any authorised or required adjustment or any correction of errors (see regulations 14(2), 17(3), 27 and 28 and, in the Schedule, paragraphs 5(6)(b)(ii) and 8(1)(b)).

(2) The registrable person must provide in the return accurate information about every matter that the prescribed form requires.

(3) The registrable person must sign, date and declare on the document forming his return that the information provided in it is true and complete.

(4) The registrable person must comply with paragraphs (1), (2) and (3) in the manner prescribed by the Commissioners in a published notice.

Payment

6.—(1) A registrable person must pay to the Commissioners the amount of CCL due from him for a given accounting period no later than the due date for the return for that period (see regulations 4(2), 4(3) and 4(4)).

(2) The registrable person must make that payment by securing that it is delivered either to the address or bank account prescribed for this purpose by the Commissioners in a published notice or to any other address or bank account that they may direct or allow.

(3) The Commissioners may allow a registrable person who has made arrangements with them for the payment of any amount of CCL due from him by means of direct debit an extra 7 days in which the payment may be made.

(4) The Commissioners shall only act pursuant to paragraph (3) in accordance with conditions they shall stipulate in a published notice.

Records

7.—(1) A registrable person is obliged to keep a record to be known as the “climate change levy account” (periodic summary of CCL due).

(2) A registrable person who makes a claim under regulations 10 and 14(1) (tax credits in respect of bad debts) is obliged to keep a record to be known as the “climate change levy bad debts account”.

(3) A registrable person who makes a claim under regulations 11 and 14(1) (other tax credits) is obliged to keep a record to be known as the “climate change levy tax credits account”.

(4) A record within this regulation must be kept in the manner stipulated in a published notice.

8. A registrable person is obliged to keep the following records—

- (a) his business and accounting records;
- (b) a copy of each CCL accounting document issued by him;
- (c) each supplier certificate and supporting analysis document received, issued or prepared by or for him to evidence that a taxable supply (or part of such a supply) by or to him was—
 - (i) excluded or exempt from CCL, or
 - (ii) a half-rate or reduced-rate supply;
- (d) documentary evidence (including any relevant invoice) detailing each taxable supply made by him;
- (e) documentary evidence (including any relevant invoice) received by him in connection with his receipt of any taxable commodity;
- (f) documentary evidence regarding the adjustment of an entry concerning the amount of CCL charged for which he is liable to account;
- (g) documentary evidence regarding any claim by him for a tax credit under regulation 10 (bad debts), regulation 11 (other tax credits) or the Schedule (tax credit for recipient) and, in each case, regarding any relevant surrounding circumstances;
- (h) the documents relevant to any special utility scheme binding him;
- (i) a record of the information he relies on in making each return pursuant to regulation 5;
- (j) any other record that may be stipulated in a published notice.

9.—(1) A registrable person is required to preserve any record required by regulation 7 or 8 for a period of at least six years.

(2) For the purposes of paragraph (1), a record within regulation 7 need only be preserved in relation to events taking place not more than six years earlier.

(3) For the purposes of paragraph (1), a record within regulation 8(c) must be preserved by the registrable person for a period of six years from the time of supply of the final supply to which it relates.

(4) For the purposes of paragraph (1), a record within regulation 8(d) or 8(e) must be preserved by the registrable person for a period of six years from the relevant time of supply or, if there is no such time, from the time of delivery.

(5) The Commissioners may direct that any such record need only be preserved for such period as they specify shorter than six years.

Bad debts: entitlement to tax credit

10.—(1) Paragraph (3) applies where—

- (a) a person has supplied a taxable commodity and has accounted for and paid the CCL chargeable on the supply,
- (b) that person and the recipient of the supply are not connected or are not the same person,
- (c) that person has issued to the recipient a climate change levy accounting document (or, if the issue of such a document is not required by or under the Act, other invoice) relating to the supply showing the CCL chargeable,
- (d) the whole or any part of the price for the supply has been written off in his accounts as a bad debt, and
- (e) the period of 6 months referred to in paragraph (8) has elapsed.

(2) Any question whether a person is connected with another for the purposes of paragraph (1) shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988(3).

(3) The person shall be entitled to a tax credit in respect of the amount of CCL chargeable calculated by reference to the outstanding amount (subject to the provisions of this Part including those provisions relating to the making of a relevant claim to the Commissioners).

(4) In this regulation and regulation 16—

“claim” refers to a claim in accordance with regulation 14 or 15, and “claimant” shall be construed accordingly;

“the outstanding amount” refers to—

- (a) if at the time of the claim no part of the price written off in the claimant’s accounts as a bad debt has been received, an amount equal to the amount of the price so written off;
- (b) if at that time any part of the price so written off has been received, an amount by which that part is exceeded by the amount of the price written off.

(5) In paragraph (4), “received” refers to receipt either by the claimant or by a person to whom has been assigned a right to receive the whole or any part of the price written off.

(6) Accordingly, the tax credit arising under this regulation shall be of an amount equal to such proportion of the CCL charged on the supply as the outstanding amount forms of the total price.

(7) For the purposes of this regulation, where the whole or any part of the price for the supply does not consist of money, the amount in money that shall be taken to represent any non-monetary part of the price shall be so much of the amount made up of—

- (a) the price excluding the CCL chargeable, and
- (b) the CCL charged on the supply,

as is attributable to the non-monetary consideration in question.

(8) Neither the whole nor any part of the price for a supply shall be taken to have been written off in accounts as a bad debt until a period of not less than six months has elapsed from the time when such whole or part became due and payable to, or to the order of, the person who made the relevant supply.

(9) Subject to paragraph (8), the whole or any part of the price for a relevant supply shall be taken to have been written off as a bad debt when an entry is made in relation to that supply in the claimant’s climate change levy bad debts account (see regulation 7(2)).

(10) Where the claimant owes an amount of money to the recipient of the relevant supply which can be set off, the price written off in the accounts shall be reduced by the amount so owed.

(11) Where the claimant holds in relation to the recipient of the relevant supply an enforceable security, the consideration written off in the account of the claimant shall be reduced by the value of that security.

(12) In paragraphs (8) to (11), “relevant supply” refers to any taxable supply on which a claim is based.

(13) In paragraph (11), “security” refers to—

- (a) in England, Wales or Northern Ireland, any mortgage, charge, lien or other security;
- (b) in Scotland, any security (whether heritable or moveable), any floating charge and right of lien or preference and right of retention (other than a right of compensation or set-off).

Other tax credits: entitlement

11.—(1) The supplier in each of the following cases is entitled to a tax credit in respect of any relevant amount of CCL charged on the supply in question (subject to the provisions of this Part including those provisions relating to the making of a relevant claim to the Commissioners)—

- (a) after a taxable supply has been made, there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time of supply, the supply would not have been a taxable supply;
 - (b) after a supply of a taxable commodity is made on the basis that it is a taxable supply, it is determined that the supply was not (to any extent) a taxable supply;
 - (c) after a taxable supply has been made on the basis that it was neither a half-rate supply nor a reduced-rate supply, it is determined that the supply was (to any extent) a half-rate or reduced-rate supply;
 - (d) CCL is accounted for on a half-rate supply as if the supply were neither a half-rate supply nor a reduced-rate supply;
 - (e) after a charge to CCL has arisen on a supply of a taxable commodity ("the original commodity") to a person who uses the commodity supplied in producing taxable commodities primarily for his own consumption, that person makes supplies of any of the commodities in whose production he has used the original commodity;
 - (f) the making of a taxable supply gives rise to a double charge to CCL within the meaning of paragraph 21 of the Act.
- (2) In paragraph (1), "relevant amount of CCL" refers to—
- (a) in relation to a case described by sub-paragraph (a), (b), (c), (d) or (e) of paragraph (1), the difference between the amount of CCL that ought to have been charged by or under the Act at the time of supply and the amount of CCL that was actually accounted for and paid by the supplier; and
 - (b) in relation to a case described by sub-paragraph (f) of paragraph (1), the amount of CCL actually charged and paid on the later supply having regard to the relative times of supply.

Tax credits: general

12.—(1) The provisions of this Part have effect subject to the requirements of Part III and the Schedule (certification scheme for excluded, exempt, half-rate and reduced-rate supplies).

(2) Accordingly, no tax credit shall arise by virtue of regulation 11 where the circumstances are such that provision is made by the Schedule for a tax credit, for the benefit of the recipient, relating to the amount in question.

13. A tax credit shall only arise under regulation 10 or 11 if a claim is made by the supplier acting in accordance with regulation 14 or 15, as the case requires.

14.—(1) Subject to paragraph (4), the supplier shall claim any such tax credit by bringing it into account when he is accounting for CCL due from him for any accounting period.

- (2) Accordingly—
- (a) the requirements of regulation 5 (content of returns), regulation 6 (payment of CCL) and regulation 7 (CCL accounts) apply subject to paragraph (1); but
 - (b) paragraph (1) applies subject to regulation 27 (corrections) and regulation 28 (corrections not exceeding £2,000).

(3) A claim subject to paragraphs (1) and (2) shall be regarded as a claim for repayment of CCL for the purposes of paragraph 64 of the Act (supplemental provisions about repayments, etc.) (and see paragraph (5)).

(4) Where the total tax credit claimed by a supplier exceeds the total of the CCL due from him for the accounting period in question, the Commissioners shall repay to him an amount equal to the excess (but see regulations 29 and 30).

(5) Given the provision made by paragraph 62(4) of the Act, this regulation has effect subject to paragraph 64 of the Act (application of supplemental provisions about repayments: three year time limit, unjust enrichment, etc.).

15.—(1) Where the Commissioners have cancelled the registration of a person in accordance with Part V of the Act, and he is not a registrable person, the Commissioners shall repay to him the amount of the tax credit if they are satisfied that he has made a proper claim to them in writing for this purpose.

(2) A claim under paragraph (1) may be combined with a claim under regulation 14(1) if appropriate.

(3) A person making a claim under paragraph (1) must furnish to the Commissioners full particulars in relation to the tax credit claimed including (but not restricted to)—

- (a) the return in which the relevant CCL was accounted for;
- (b) the amount of the CCL in question and the date and manner of its payment to the Commissioners;
- (c) the events by virtue of which the bad debt or entitlement to a tax credit arose; and
- (d) any supporting documentary or other evidence.

(4) Where the Commissioners are satisfied that a person who has made a claim in accordance with paragraphs (1) and (3) is entitled to a tax credit and that he has not previously had the benefit of that credit, they shall repay to him an amount equal to the credit (but see regulations 29 and 30).

(5) The Commissioners shall not be liable to make any repayment under this regulation unless and until the person has made all the returns which he was required to make (and see regulation 29 and 30).

(6) Given the provision made by paragraph 62(4) of the Act, this regulation has effect subject to paragraph 64 of the Act (application of supplemental provisions about repayments: three year time limit, unjust enrichment, etc.).

Bad debts: supplementary provisions

16.—(1) Where—

- (a) a claimant in relation to regulation 10 has made a taxable supply,
- (b) there exist one or more other matters in respect of which the claimant is entitled to a debt owed by the recipient (whether or not they involve a taxable supply), and
- (c) a payment has been received by the claimant from or on behalf of the recipient,

the payment shall be attributed to the taxable supply and the other matters in accordance with the rules set out in paragraphs (3) and (5).

(2) The debts arising in respect of the taxable supply and the other matters are collectively referred to as debts in paragraphs (3) to (5).

(3) The payment shall be attributed to the debt that arose earliest and, if not wholly attributable to that debt, to the other debts in the order of the dates on which they arose.

(4) Attribution under paragraph (3) shall not be made to the extent that the payment was allocated to a debt by the recipient (customer) at the time of payment.

(5) Where—

- (a) the earliest debt and the other debts to which the whole of the payment could be attributed arose on the same day, or
- (b) the debts to which the balance of the payment could be attributed in accordance with paragraph (3) arose on the same day,

the payment shall be attributed to each remaining debt according to the proportion that the debt in question contributes to the total remaining debt.

17.—(1) Where a supplier—

- (a) has received the benefit from a tax credit provided for by regulation 10 (bad debts), and
- (b) a payment—
 - (i) for the taxable supply in question is subsequently received by him (or by a person to whom has been assigned a right to receive the whole or any part of the price written off), or
 - (ii) is attributed to that taxable supply by virtue of regulation 16,
 that tax credit shall be withdrawn with effect from when sub-paragraph (b)(i) or (b)(ii) is satisfied, as the case requires.

(2) Where a supplier—

- (a) has received the benefit from a tax credit provided for by regulation 11 (tax credits other than bad debts), and
 - (b) it subsequently transpires that any relevant requirement of this Part is not complied with,
- that tax credit shall be withdrawn with effect from when he received that benefit.

(3) Where a tax credit is withdrawn under this regulation—

- (a) the requirements of regulation 5 (content of returns), regulation 6 (payment of CCL) and regulation 7 (CCL accounts) apply subject to this regulation; but
- (b) this regulation applies subject to regulation 27 (corrections) and regulation 28 (corrections not exceeding £2,000).

(4) Paragraph (3) applies subject to paragraph 67 of the Act (assessment for excessive repayment).

Form and manner of claim for repayment of overpaid CCL if no person entitled to tax credit

18. A claim under paragraph 63 of the Act (claim for repayment of CCL which was not CCL due if no entitlement to tax credit) shall be made in writing to the Commissioners and shall, by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated.

Tax credits and other repayments: unjust enrichment—reimbursement arrangements to be disregarded

19. In this regulation and in regulations 20 to 25—

“claim” refers to a claim made under regulation 14 or 15 or under paragraph 63 of the Act (claim for repayment of CCL which was not CCL due if no person entitled to tax credit) and “claimed” and “claimant” must be construed accordingly;

“reimbursement arrangements” refers to any arrangements for the purposes of the claim which—

- (a) are made by the claimant for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
- (b) provide for the reimbursement of persons (recipients) who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Commissioners;

“relevant amount” refers to that part (which may be the whole) of the amount of the claim which the claimant has reimbursed or intends to reimburse to other persons (recipients).

20. For the purposes of paragraph 64(2) of the Act (defence by the Commissioners that repayment by them of an amount claimed would unjustly enrich the claimant) reimbursement arrangements made by a claimant shall be disregarded except where they—

- (a) include the provisions described in regulation 21, and
- (b) are supported by the undertakings described in regulation 25.

21. The provisions referred to in regulation 20(a) are that—

- (a) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates;
- (b) no deduction will be made from the relevant amount by way of fee or charge (however expressed or effected);
- (c) reimbursement will be made only in cash or by cheque;
- (d) any part of the relevant amount that is not reimbursed by the time mentioned in paragraph (a) will be repaid by the claimant to the Commissioners;
- (e) any interest paid by the Commissioners on any relevant amount repaid by them will also be treated by the claimant in the same way as the relevant amount falls to be treated under paragraphs (a) and (b); and
- (f) the records described in regulation 23 will be kept by the claimant and produced by him to the Commissioners in accordance with regulation 24.

22. The claimant shall, without prior demand, make any repayment to the Commissioners that he is required to make by virtue of regulation 21(d) or 21(e) within 14 days of the expiry of the period of 90 days referred to in regulation 21(a).

23. The claimant shall keep records of the following matters—

- (a) the names and addresses of those persons (recipients) whom he has reimbursed or whom he intends to reimburse;
- (b) the total amount reimbursed to each such person (recipient);
- (c) the amount of interest included in each total amount reimbursed to each person (recipient);
- (d) the date that each reimbursement is made.

24.—(1) Where a claimant is given notice in accordance with paragraph (2) he shall, in accordance with such notice, produce to the Commissioners the records that he is required to keep pursuant to regulation 23.

(2) A notice given for the purposes of paragraph (1) shall—

- (a) be in writing;
- (b) state the date on which and the place and time at which the records are to be produced; and
- (c) be signed and dated by the Commissioners.

(3) Such a notice may be given before or after, or before and after, the Commissioners have paid the relevant amount to the claimant.

25.—(1) The undertakings referred to in regulation 20(b) shall be given to the Commissioners by the claimant no later than the time at which he makes the claim for which the reimbursement arrangements have been made.

- (2) The undertakings shall be in writing and shall be signed and dated by the claimant.
- (3) The undertakings shall be to the effect that—
 - (a) at the date of the undertakings he is able to identify the names and addresses of those persons (recipients) whom he has reimbursed or whom he intends to reimburse;
 - (b) he will apply the whole of the relevant amount repaid to him (without any deduction by way of fee, charge or otherwise) to the reimbursement in cash or by cheque of such persons (recipients) no later than 90 days after he receives that amount (unless he has properly reimbursed them already);
 - (c) he will apply any interest paid to him on the relevant amount repaid to him wholly to the reimbursement of such persons (recipients) no later than 90 days after he receives that interest;
 - (d) he will repay to the Commissioners without demand the whole or such part of the relevant amount repaid to him or of any interest paid to him as he fails to apply in accordance with the undertakings mentioned in sub-paragraph (b) or (c);
 - (e) he will keep the records described in regulation 23; and
 - (f) he will comply with any notice given to him in accordance with regulation 24 concerning the production of such records.

Corrections to CCL returns

- 26.** A registrable person—
- (a) shall only be taken as providing full information in the prescribed or specified form and manner for the purposes of paragraph 100(3) of the Act (disclosure about inaccurate CCL return),
 - (b) with respect to any inaccuracy to which paragraph 100(1)(a) of the Act applies (civil penalty for misdeclaration or neglect in relation to inaccurate return),

if he delivers that information in writing to the Commissioners, or acts in accordance with regulation 28, at a time to which paragraph 100(3)(a) of the Act applies (no reason to believe enquiries being made into CCL affairs).

27.—(1) A registrable person shall correct any error made by him in accounting for CCL or in connection with his CCL account and, as appropriate, make any adjustment required by regulation (5)(1)(b) (adjustments to CCL returns).

(2) That correction or adjustment shall be made within such time and by means of such payment, financial adjustment, entry in accounts or other method as the Commissioners may require.

- (3) This regulation has effect subject to, as the case requires—
 - (a) the time limit applying to regulations 14(1), 17(1) and 17(2) (tax credits) (see regulations 14(5) and 17(4)—amounts paid more than three years before claim made and assessment subject to time limit in paragraph 69 of Act);
 - (b) the time limit applying to paragraph 8(1) of the Schedule (recipient's tax credit) (see paragraph 8(5) of the Schedule—amounts paid more than three years before claim made);
 - (c) a time limit of three years after the end of the accounting period in relation to which the error was made or the adjustment became required; or

- (d) any time limit for an assessment in relation to the error in question (see paragraphs 78(1), 78(2)(d), 79 and 80 of the Act).

28.—(1) This regulation applies by way of an exception to regulation 27 but only in relation to errors.

(2) Where a registrable person discovers that a return he has previously made is based on an under-calculation he must correct the error by adding an appropriate amount to the CCL due for the accounting period in which the discovery is made under regulation 5(1)(b) (CCL due).

(3) Where a registrable person discovers that a return he has previously made is based on an over-calculation he must correct the error by deducting an appropriate amount from the CCL due for the accounting period in which the discovery is made under regulation 5(1)(b) (CCL due).

(4) For the purposes of paragraphs (2) and (3)—

“under-calculation” refers to the aggregate, which must not exceed £2,000, of—

- (a) the CCL due on taxable supplies—
 - (i) the times of supply of which were in the accounting period to which the previous return related, and
 - (ii) for which the registrable person in question was liable to account;
- (b) but which was not properly taken into consideration for that period (see regulation 5(1)) (“understated CCL”);

“over-calculation” refers to the aggregate, which must not exceed £2,000, of—

- (a) amounts that were wrongly taken as CCL due on taxable supplies—
 - (i) the times of supply of which were in the accounting period to which the previous return related, and
 - (ii) for which the registrable person in question was liable to account;
- (b) and which were wrongly taken into consideration for that period (see regulation 5(1)) (“overstated CCL”).

(5) For the purposes of paragraph (4)—

- (a) in reckoning the aggregate constituting the under-calculation no allowance shall be made for any overstated CCL; and
- (b) in reckoning the aggregate constituting the over-calculation no allowance shall be made for any understated CCL.

(6) A registrable person making a correction under paragraph (2) or (3) shall make proper allowance for that correction for the purposes of complying with regulation 7(1) (CCL account) or 7(3) (tax credits account), as appropriate.

(7) Where an error in a return has to any extent been corrected under this regulation—

- (a) that return shall be regarded as having been corrected to that extent, and
- (b) the registrable person shall to that extent be taken to have provided full information with respect to the inaccuracy in the prescribed form and manner for the purposes of paragraph 100(3) of the Act (disclosure about inaccurate CCL return).

(8) A person shall not correct an error in a return (where that error is the result of an under-calculation or over-calculation) except in accordance with this regulation.

(9) This regulation has effect subject to, as the case requires—

- (a) any requirement of the Commissioners under regulation 27(2), and
- (b) any applicable time limit specified in regulation 27(3).

Set-off

29.—(1) This regulation applies where—

- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of CCL; and
- (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of any CCL (or other tax or duty) under their care and management.

(2) Where the total of the amount or amounts mentioned in paragraph (1)(a) exceeds the total of the amount or amounts mentioned in paragraph (1)(b), the latter shall be set-off against the former.

(3) Where the total of the amount or amounts mentioned in paragraph (1)(b) exceeds the total of the amount or amounts mentioned in paragraph (1)(a), the Commissioners may set off the latter in paying the former.

(4) Where the total of the amount or amounts mentioned in paragraph (1)(a) is the same as the total of the amount or amounts mentioned in paragraph (1)(b), no payment need be made in respect of either.

(5) Where this regulation applies and an amount has been set off in accordance with any of paragraphs (2) to (4), the duty of both the person in question and the Commissioners to pay the amount concerned shall be treated as having been discharged accordingly.

30.—(1) This regulation applies where—

- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax or duty (other than CCL) under their care and management; and
- (b) the Commissioners are under a duty, at the same time, to make a payment or repayment to that person of an amount or amounts of or in respect of CCL.

(2) Where the total of the amount or amounts mentioned in paragraph (1)(a) exceeds the total of the amount or amounts mentioned in paragraph (1)(b), the latter shall be set-off against the former.

(3) Where the total of the amount or amounts mentioned in paragraph (1)(b) exceeds the total of the amount or amounts mentioned in paragraph (1)(a), the Commissioners may set off the latter in paying the former.

(4) Where the total of the amount or amounts mentioned in paragraph (1)(a) is the same as the total of the amount or amounts mentioned in paragraph (1)(b), no payment need be made in respect of either.

(5) Where this regulation applies and an amount has been set off in accordance with any of paragraphs (2) to (4), the duty of both the person in question and the Commissioners to pay the amount concerned shall be treated as having been discharged accordingly.

31.—(1) Regulation 29 or 30 shall not require any such amount as is mentioned in paragraph (1)(b) of either regulation (“the credit”) to be set against any item mentioned in paragraph (1)(a) of either regulation (“the debit”) where—

- (a) an insolvency procedure has been applied to the person entitled to the credit;
- (b) the credit became due after that procedure was applied; and
- (c) the liability to pay the debt either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business relevant for CCL purposes at times before the procedure was so applied.

(2) An insolvency procedure is applied to a person for the purposes of this regulation in the circumstances described by paragraphs 75(2) to 75(5) of the Act (insolvency procedures for purposes of this regulation).

32. A reference in regulation 29 or 30 to an amount in respect of tax or duty includes a reference to an amount of any related penalty, surcharge or interest that may be recovered as if it was an amount of tax or duty.

Special rules for excluded, exempt, half-rate and reduced-rate supplies

33. The provisions of this Part have effect subject to Part III of and the Schedule to these Regulations (accounting and payment in the case of excluded, exempt, half-rate and reduced-rate supplies).

PART III

EXCLUDED, EXEMPT, HALF-RATE AND REDUCED-RATE SUPPLIES

Supplier certificates: basic rules

34.—(1) Any exclusion or exemption provided for by, under or by virtue of—

- (a) paragraph 9(2)(f) (community heating arrangements), 11 (onward supplies and exports), 12 (transport), 13 (commodity producers), 14 (electricity producers), 15 (combined heat and power stations) or 18 (non fuel use) of the Act, or
- (b) regulation 41 (or any other relevant regulation made under paragraph 21 of the Act to avoid a double charge to CCL(4)),

shall only be given effect if and to the extent that, before the time of supply, the recipient has delivered to the supplier a certificate that accords with paragraph (2).

(2) Any such certificate shall—

- (a) represent that the supply (or a quantified part of the supply) meets the requirements for each such exclusion or exemption,
- (b) comply, as necessary, with regulations 37(2), 37(3), 37(4) and 38(2), and
- (c) be supported, if necessary, in accordance with paragraph (3).

(3) Where the certificate represents that a quantified part of the supply meets the requirements for an exclusion or exemption referred to in paragraph (1), the recipient must support that certificate with an analysis document demonstrating that the part is calculated in a manner consistent with regulation 38 and the Schedule.

35.—(1) A taxable supply is to be treated as being a half-rate supply only if and to the extent that, before the time of supply, the recipient has delivered to the supplier a certificate that accords with paragraph (2).

(2) Any such certificate shall—

- (a) represent that the supply (or a quantified part of the supply) meets the requirements for a half-rate supply in paragraph 43 of the Act (horticultural producers),
- (b) comply, as necessary, with regulations 37(2), 37(3), 37(4) and 38(2), and
- (c) be supported, if necessary, in accordance with paragraph (3).

(3) Where the certificate represents that a quantified part of the supply meets the requirements for a half-rate supply, the recipient must support that certificate with an analysis document demonstrating that the part is calculated in a manner consistent with regulation 38 and the Schedule.

(4) No other relevant regulation on the day these Regulations are made.

36.—(1) For the purposes of regulation 45(2) (certain supplies to a facility covered by climate change agreement), a taxable commodity shall be regarded for CCL purposes as supplied to a facility that is certified as being covered by a climate change agreement only if and to the extent that, before the time of supply, the recipient has delivered to the supplier a certificate that accords with paragraph (2).

(2) Any such certificate shall—

- (a) represent that the supply (or a quantified part of the supply) meets the requirements for a reduced-rate supply in paragraph 44 of the Act (facilities covered by climate change agreements),
- (b) comply, as necessary, with regulation 37(2), 37(3), 37(4) and 38(2), and
- (c) be supported, if necessary, in accordance with paragraph (3).

(3) Where the certificate represents that a quantified part of the supply meets the requirements for a reduced-rate supply for the purposes of regulation 45(2), the recipient must support that certificate with an analysis document demonstrating that the part is calculated in a manner consistent with regulation 38 and the Schedule.

37.—(1) A certificate delivered under regulation 34, 35 or 36 (a “supplier certificate”) only has effect in relation to a supply the time of supply of which is on or after the certificate’s implementation date.

(2) A supplier certificate and an analysis document shall—

- (a) be in a form prescribed by the Commissioners for this purpose in a published notice, and
- (b) in the case of the supplier certificate, be signed and dated by a person duly authorised for this purpose by the recipient.

(3) Where regulation 34, 35 or 36 applies to part of a supply and at least one other of them applies to another part of that supply, any supplier certificate the recipient delivers under one of those regulations shall be combined by him with a supplier certificate under any other applicable regulation such that the resulting composite certificate satisfies paragraph (2) of every applicable regulation.

(4) A recipient shall not combine—

- (a) a supplier certificate relating to the supply of one taxable commodity with a supplier certificate relating to the supply of any other such commodity;
- (b) a supplier certificate delivered to one supplier with a supplier certificate delivered to another supplier;
- (c) a supplier certificate relating to a reference number the supplier uses for him with a supplier certificate relating to another reference number the supplier uses for him; or
- (d) supplier certificates combined contrary to sub-paragraph (a) with supplier certificates combined contrary to sub-paragraph (b).

(5) A recipient who delivers a supplier certificate to a supplier must deliver a copy to the Commissioners within 30 days of doing so (together with any supporting analysis document).

(6) In this regulation, “implementation date” refers to the earlier of—

- (a) the fifth working day after the one on which the certificate is delivered to the supplier at any address the supplier designates for this purpose, and
- (b) the day on which (or any day after which) the certificate is so delivered if, on that day, the supplier first applies the information contained in that certificate to the relevant supplies he makes to the recipient.

(7) To the extent that a person does anything before 1st April 2001 in purported compliance or conformity with or purported pursuit of regulation 34, 35, 36, 38, 43 or this regulation it shall, to that extent, be regarded as having been done on 1st April 2001.

Supplier certificates: accounting for and payment of CCL

38.—(1) The Schedule to these Regulations has effect for the purpose of—

- (a) supplementing the provisions of regulations 34 to 37 (which, accordingly, have effect subject to that Schedule), and
- (b) determining the manner in which a person who is required to account for CCL does so in the case of a supply of a quantity of a taxable commodity—
 - (i) to which regulation 34, 35 or 36 applies, or
 - (ii) that otherwise includes a reduced-rate part.

(2) A recipient shall include in a supplier certificate the percentage of the supply or supplies on which CCL is not due calculated in accordance with that Schedule (recipient's relief percentage).

(3) This Part and the Schedule must be read as one.

Special cases

39.—(1) Regulations 34 to 38 apply, as appropriate, even if the supplier and the recipient are the same person (deemed self-supplies and the case provided for by paragraph (2)).

(2) A recipient who is liable to account for the CCL charged on a taxable supply shall be regarded as the same person as the supplier for the purposes of this Part and the Schedule (see paragraph 40(2) of the Act—taxable supplies made by persons who are neither resident in the United Kingdom nor utilities).

Suppliers to producers of commodities

40.—(1) An exemption provided for by paragraph 13 or 14(1) of the Act (supplies to producers of commodities other than electricity and certain supplies to electricity producers) has effect subject to paragraph (2).

(2) The supply of the taxable commodity in question shall be a taxable supply (and not an exempt supply) to the extent that it is to be used by the recipient for the purposes of—

- (a) headquarters administration facilities;
- (b) telephone call centres;
- (c) dedicated visitor centres;
- (d) any commercial matters (including power for computers and ancillary equipment, and legal, contractual or taxation matters);
- (e) road tanker deliveries otherwise than at the production site.

(3) This regulation has effect without prejudice to the generality of paragraph 13 or 14(1) of the Act.

Non-registrable electricity producers

41.—(1) Paragraph (2) applies if and to the extent that a non-registrable electricity producer produces electricity and makes a supply of it to an electricity utility (or a person treated as such for CCL purposes).

(2) If and to the extent that this paragraph applies, that supply of electricity shall be treated for the purposes of paragraph 14(1) of the Act as a use of that electricity in relation to which the exemption provided for by that paragraph is retained.

42.—(1) A supply of a taxable commodity to a non-registrable electricity producer shall be treated as being a half-rate supply to the extent that he both—

- (a) uses that commodity to produce electricity, and
- (b) uses that electricity in making a supply meeting the description of a half-rate supply in paragraph 43(1) of the Act (horticultural producers).

(2) Paragraph (1) has effect subject to regulations 35, 37, 38 and 39.

43.—(1) A non-registrable electricity producer who delivers a supplier certificate that is required to be supported by an analysis document shall annex to that analysis document details of—

- (a) the quantity of electricity that is attributable to self supplies,
- (b) the individual quantities of electricity supplied by him to other persons, and
- (c) the identity and address of each other person to whom he supplies electricity.

(2) This regulation has effect by way of supplement to the requirements of regulations 34(3), 35(3) and 36(3) and, to that extent, is subject to regulation 38.

(3) In this regulation—

“electricity” refers to electricity to which the supplier certificate in question relates;

“self supplies” refers to any supplies of electricity that are deemed by paragraph 23(3) of the Act (use of commodities by producers) to be made to himself by the relevant non-registrable electricity producer (own use).

(4) In these Regulations and the Schedule a reference to an analysis document includes a reference to any annexe required by paragraph (1).

Facilities covered by climate change agreements

44.—(1) For the purposes of paragraph 44 of the Act (reduced-rate for supplies covered by climate change agreement), a taxable commodity shall not be regarded as being supplied otherwise than to a facility covered by a climate change agreement solely because it is delivered and stored elsewhere prior to being burned within that facility.

(2) Paragraph (1) does not apply in a case where the taxable commodity in question is electricity or gas.

45.—(1) This regulation applies where a taxable commodity is supplied to a non-registrable electricity producer otherwise than at a facility that is certified as being covered by a climate change agreement in accordance with paragraph 44(1) of the Act.

(2) That taxable commodity shall be regarded as supplied to a facility certified as being covered by a climate change agreement to the extent that it is used to produce electricity that is in fact supplied to such a facility by that non-registrable electricity producer.

(3) This regulation has effect subject to regulations 36, 37, 38 and 39.

PART IV

RENEWABLE SOURCE ELECTRICITY

Interpretation of Part IV

46.—(1) In this Part—

“exempt renewable supplies” refers to that expression in paragraph 19(2) of the Act;

“renewable source contract” refers to the contract mentioned in paragraph 19(1)(b) of the Act (contract containing renewable source declaration).

(2) In regulations 47 and 48, “relevant Authority” refers to the Gas and Electricity Markets Authority (in the case of electricity generated otherwise than in Northern Ireland) or the Director General of Electricity Supply for Northern Ireland (in the case of electricity generated in Northern Ireland).

(3) In regulation 49(3), “relevant Authority” refers to the Gas and Electricity Markets Authority (in the case of electricity supplied in Great Britain) or the Director General of Electricity Supply for Northern Ireland (in the case of electricity supplied in Northern Ireland).

(4) In regulations 49(4) and 49(5), “relevant Authority” refers to either or both the Gas and Electricity Markets Authority and the Director General of Electricity Supply for Northern Ireland.

Generation and certification of renewable source electricity

47.—(1) Subject to paragraphs (3) to (15) and regulation 48, electricity is “renewable source electricity” for the purposes of the Act to the extent that it has been generated from renewable sources provided that it is not electricity generated from a large hydro generating station.

(2) In this regulation—

“declared net capacity” means the highest generation of electricity (at the main alternator terminals) which, on the assumption that the source of power is available without interruption, can be maintained indefinitely without causing damage to the plant less so much of that capacity as is consumed by the plant;

“distribution system” and “transmission system” in relation to Great Britain have the meanings given in section 4 of the Electricity Act 1989⁽⁵⁾ as it will have effect once it has been amended by section 28 of the Utilities Act 2000⁽⁶⁾; in relation to Northern Ireland “transmission system” system has the meaning given in article 3 of the Electricity (Northern Ireland) Order 1992⁽⁷⁾;

“fossil fuel” means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products (and “natural gas” and “petroleum products” have the same meanings as in the Energy Act 1976⁽⁸⁾);

“generator”, except in the definition of “hydro generating station” below, means the operator of a generating station;

“hydro generating station” means a generating station which is wholly or mainly driven by water other than stations driven by tidal flows, waves, ocean currents or geothermal sources and the “station” extends to all structures and works for holding or channelling water for a purpose directly related to the generation of electricity together with any turbines and associated generators directly connected to or fed by such common structures or works;

(5) 1989 c. 29.

(6) At the time of making these regulations section 28 of the Utilities Act 2000 has not yet been brought into force, but is to be treated as if it had been in this regulation.

(7) S.I.1992/231 (N.I. 1).

(8) 1976 c. 76.

“large hydro generating station” means a hydro generating station with a declared net capacity of more than 10 megawatts;

“renewable sources” means sources of energy other than fossil fuel or nuclear fuel and includes waste provided that it is not waste with an energy content 90 per cent. or more of which is derived from fossil fuel;

“waste” has the meaning given in section 75(2) of the Environmental Protection Act 1990⁽⁹⁾ as that subsection will have effect once it has been amended by paragraph 88 of Schedule 22 to the Environment Act 1995⁽¹⁰⁾⁽¹¹⁾, but does not include gas derived from landfill sites or gas produced from the treatment of sewage.

(3) In the following paragraphs, except in relation to paragraphs (7), (8) and (12), references to fossil fuel do not include references to any fossil fuel content of waste.

(4) Paragraph (11) is to apply where a generating station is fuelled by renewable sources and fossil fuel in order to calculate the respective proportions of electricity generated by that station from renewable sources and from fossil fuel in any period specified by the relevant Authority, but paragraph (11) does not apply to generating stations to which paragraph (10) applies.

(5) Where the renewable sources used to fuel a generating station includes waste (whether or not the generating station is fuelled by waste in combination with other renewable sources or fossil fuel) paragraphs (7), (8) and (9) apply in order to calculate the amount of renewable source electricity which is to be regarded as generated from that waste in any period specified by the relevant Authority.

(6) Paragraph 10 applies where fossil fuel is used only for the purposes specified in that paragraph.

(7) Subject to paragraphs (8) and (9), where a generating station is fuelled by waste, the proportion of electricity generated from waste which is to be regarded as renewable source electricity is 50 per cent. of the proportion of electricity which has been generated by that station from waste provided that the relevant Authority determines that the generator has no reasonable grounds to believe that more than 50 per cent. of the energy content of the waste used is derived from fossil fuel.

(8) On request by a generator who considers that more than 50 per cent. of the electricity generated from waste by that station has been generated from waste which is not or has not been derived from fossil fuel, the relevant Authority shall determine in accordance with paragraph (12) the proportion of electricity so generated from such waste and that proportion shall be regarded as renewable source electricity.

(9) Where the relevant Authority determines that a generating station is fuelled by waste at least 98 per cent. of the energy content of which is derived from plant or animal substances (including agricultural, forestry, wood and human wastes or residues), the amount of electricity generated from such waste which is to be regarded as renewable source electricity is 100 per cent. of the electricity which is generated from such waste.

(10) Where a generating station uses fossil fuel only for one or more of the following purposes—

- (a) the ignition of gases of low or variable calorific value;
- (b) the heating of the combustion system to its normal operating temperature or the maintenance of that temperature;
- (c) emission control;

provided that the relevant Authority determines that in any year the energy content of the fossil fuel used for the above purposes in the generating station does not exceed 10 per cent. of the energy content of the renewable sources used, that fossil fuel shall be treated as if it were the renewable source used as the remainder of the fuel in the generating station.

⁽⁹⁾ 1990 c. 43.

⁽¹⁰⁾ 1995 c. 25.

⁽¹¹⁾ At the time of making these Regulations paragraph 88 of Schedule 22 to the Environment Act 1995 has not yet been brought into force, but is to be treated as if it had been in this regulation.

(11) Where a generating station is fuelled partly by renewable sources and partly by fossil fuel, (with the exception of generating stations to which paragraph (10) applies) the respective proportions of electricity which have been generated from fossil fuel and any one or more renewable sources shall be determined by the relevant Authority in the manner described in paragraph (12), and the proportion of electricity generated from renewable sources other than waste (to which paragraphs (7), (8) and (9) apply) shall be regarded as renewable source electricity.

(12) In any case where the relevant Authority is required or requires to determine the proportions of electricity generated from either fossil fuel or any one or more renewable sources, it shall do so by reference to the energy content of the relevant fuels.

(13) Where the amount of electricity generated by a hydro generating station has been increased due to the flow rate, height or pressure of water being artificially increased as a result of pumping, the amount of renewable source electricity generated by that station shall be calculated by deducting from the amount of electricity generated by the station any electricity which has not been generated from renewable sources which is used for such pumping.

(14) For the purposes of the Act the amount of a supply of renewable source electricity is to be calculated at the point at which such electricity is first delivered from a generating station to a distribution or transmission system within the United Kingdom (excluding territorial waters).

(15) Where the relevant Authority is required to make any determination under this regulation it shall only be so required once it has been provided with adequate information on which to base its decision.

48.—(1) A quantity of electricity constitutes “renewable source electricity” for the purposes of paragraphs 19 and 20 of the Act only if and to the extent that it complies with regulation 47 and is the subject of a certificate (a “levy exemption certificate”) issued by the relevant Authority to confirm that the requirements of regulation 47 are satisfied in relation to that quantity.

(2) Each levy exemption certificate (“LEC”) shall carry a unique identifying reference (“identifier”).

(3) The relevant Authority need not issue a LEC in relation to any quantity of electricity under paragraph (1) if—

- (a) the person who generates that electricity does not provide the relevant Authority with such information, particulars, records and declarations as it may require for the purposes of that paragraph or regulation 47;
- (b) the person who generates that electricity does not, if so required, provide the relevant Authority with updated readings from any relevant electricity meter;
- (c) any person authorised by the relevant Authority has not, on request, been granted access at any reasonable time to the premises from where that electricity is generated;
- (d) any person authorised by the relevant Authority has not, on request and having been granted access to premises in accordance with sub-paragraph (c), been permitted—
 - (i) to inspect or test anything that is on those premises, and
 - (ii) to inspect any records that are on those premises, connected with the generation or supply of that electricity;
- (e) any person authorised by the relevant Authority has not, on request, been granted access to any premises at any reasonable time to take updated readings from any relevant electricity meters;
- (f) any one or more of sub-paragraphs (a) to (e) have not been satisfied within such time as the relevant Authority considers reasonable for the purpose in question; or

- (g) the relevant Authority is for any reason not satisfied that the electricity in question should be regarded as renewable source electricity.

Conditions for exemption from CCL

49.—(1) Any part of a quantity of electricity that is the subject of a LEC shall be regarded as never having been renewable source electricity capable of being the subject of exempt renewable supplies for the purposes of paragraph 19 of the Act if one or more of the conditions prescribed in paragraphs (2), (3), (4) and (5) are not fulfilled.

- (2) The electricity must not be allocated to a supply to a person who—
- (a) intends to cause the electricity to be exported from the United Kingdom, and
 - (b) has no intention to cause it to be brought back into the United Kingdom afterwards.
- (3) Should the electricity be allocated to some supply pursuant to some renewable source contract, the supplier must inform the relevant Authority of this fact and of the relevant LEC identifier.
- (4) At any time up to 6 years after the day the electricity is generated—
- (a) the person who generated it must provide the relevant Authority on request with readily legible records relating to and detailing—
 - (i) the generation process,
 - (ii) the supplies made of that electricity and the relevant recipients,
 - (iii) the relevant levy exemption certificates, and
 - (iv) any relevant information, particulars or records referred to in regulation 48(3)(a);and
 - (b) any supplier of that electricity must provide the relevant Authority on request with readily legible records relating to and detailing—
 - (i) the supplies he received or made of that electricity,
 - (ii) the relevant recipients of any supplies he made of that electricity, and
 - (iii) the relevant levy exemption certificates.
- (5) The following time limits apply as part of the conditions described in this regulation—
- (a) paragraph (3)—the supplier must comply within such reasonable time as the relevant Authority allows for this purpose;
 - (b) paragraph (4)—the generator and the supplier, as appropriate, must comply within such reasonable time as the relevant Authority allows for this purpose.

50. Supplies shall not be regarded as exempt renewable supplies for the purposes of paragraph 19 of the Act unless—

- (a) the supplier provides the recipient with a written notice for the duration of the renewable source contract, updated as necessary, setting out how to identify those supplies of electricity that—
 - (i) are or will be made under the renewable source contract, and
 - (ii) are or will be referred to on a climate change levy accounting document (or an invoice) issued in respect of those supplies;
- (b) the supplier retains a copy of each such notice for 6 years starting from the day after it is provided to the recipient;
- (c) the supplier supplies a copy of any such notice to the Commissioners no later than the fourteenth day after the Commissioners so request.

51.—(1) The exemption provided for by paragraph 19(1) of the Act (exemption: supply of electricity from renewable sources) shall only be given effect if the supplier, and each other person (if any) who is a generator of any renewable source electricity allocated by the supplier to supplies under the renewable source contract in question, has delivered a copy of the relevant notice to the relevant Authority.

(2) In paragraph (1), “relevant notice” refers to the written notice mentioned in paragraph 19(1) (d) of the Act relating to the supply of electricity and contract in question (notice to Commissioners agreeing to fulfil conditions of exemption).

PART V

ELECTRICITY AND GAS

Self-supply of electricity by producer

52.—(1) For the purposes of paragraph 23(3)(b)(ii) of the Act (self-supply by producer of electricity from taxable commodities), electricity shall be treated as produced from taxable commodities except to the extent that—

- (a) it is produced from material that is not a taxable commodity for the purposes of the Act (see paragraph 3 of the Act); or
- (b) it constitutes renewable source electricity as prescribed by regulation 47 (excluding, for this purpose, regulation 48).

(2) Electricity shall not be regarded as falling within paragraph (1)(a) to the extent that it is produced by or in—

- (a) a large hydro generating station within the meaning of regulation 47(2), or
- (b) a nuclear power station.

(3) Accordingly electricity produced by or in a large hydro station or a nuclear power station shall be treated as produced from taxable commodities for the purposes of paragraph 23(3)(b)(ii) of the Act.

Small-scale users of electricity and gas

53.—(1) Paragraphs (2) and (4) prescribe the rates for the purposes of paragraph 27(6) of the Act (maximum rates of supply for small-scale electricity and gas users).

(2) In the case of electricity, the prescribed rate—

- (a) is any rate at which the supplier supplies electricity to a person provided that the supplier issues an invoice or statement of account (however termed or styled) to that person in respect of those supplies no more than once in each period of six weeks, or
- (b) is the rate at which the supplier supplies electricity to the person in question provided that in any period of one year that includes the Reference Day the maximum demand from that person is less than 100 kilowatts.

(3) The “maximum demand” for the purposes of paragraph (2)(b) shall be determined by the supplier as follows—

- (a) establish the three highest demands for that person in a period of one year including the Reference Day;
- (b) the mean of those three demands is the relevant “maximum demand”;
- (c) disregard any supplies of electricity made to the person by a different supplier.

- (4) In the case of gas, the prescribed rate—
- (a) is any rate at which the supplier supplies gas to a person provided that the supplier issues an invoice or statement of account (however termed or styled) to that person in respect of those supplies no more than once in each period of six weeks, or
 - (b) in any other case, is 750 megawatt hours in a period of one year.
- (5) The rate at which a person must be taken to be supplied with gas for the purposes of paragraph (4)(b) shall be determined by the supplier as follows—
- (a) estimate, for each individual reference number used or to be used by the supplier in question for that person, the quantity of gas to be supplied in the period starting on the Reference Day and ending 1 year later;
 - (b) the relevant gas rate shall be taken to be—
 - (i) if there is only one such quantity, that quantity; or
 - (ii) the highest of those individual quantities;
 - (c) disregard—
 - (i) the aggregate of those individual quantities (if there is more than one);
 - (ii) any supplies of gas that may be made to the person by a different supplier.
- (6) The supplier need not make a further determination under paragraph (3) or (5) if he has reasonable grounds to believe that the further determination would result in the person—
- (a) remaining a small-scale user; or
 - (b) remaining a person who is not a small-scale user.
- (7) In this regulation—
- “Reference Day” refers to the day mentioned in paragraph 27(6) of the Act;
 - “reference number” refers to that expression in paragraph 27(5)(e) of the Act;
 - “estimate” requires the use of any reasonable and accurate method.

Special utility schemes

54.—(1) This regulation applies at any time after a special utility scheme has taken effect under paragraphs 29(4) and 29(5) of the Act but before the end of the period specified for which it is to have effect under paragraph 29(3) of the Act.

(2) If the Commissioners are satisfied that there will be no risk to the revenue, they may agree with the utility in question to amend the scheme or terminate it early.

(3) The Commissioners may terminate the scheme early if the utility in question—

- (a) fails to abide by the scheme despite having elected in writing to be bound by it under paragraph 29(4) of the Act, or
- (b) becomes, for any reason, incapable of abiding by the scheme.

(4) Termination under paragraph (3) shall take effect from such time as the Commissioners shall state in a written notice served by them for the purposes of that paragraph on the utility in question or on any relevant representative referred to in regulation 57 (representatives: incapacity, insolvency, etc.).

(5) The Commissioners shall not state a time in that written notice that is earlier than when it is served under paragraph (4).

(6) Paragraph (5) shall not preclude the Commissioners from recovering by or under the Act any CCL that would have been due at any time up to the time so stated but for the special utility scheme having effect up to that time.

(7) A special utility scheme shall not be either amended or terminated early except in accordance with this regulation.

PART VI

DEATH, INCAPACITY, INSOLVENCY, TRANSFERS

Individuals: death or incapacity

55.—(1) The Commissioners may, for CCL purposes and subject to this regulation, treat a person who carries on relevant activities on behalf of an individual who has died or become temporarily incapacitated as if they were the same person.

(2) Such treatment may continue pending someone other than that individual being registered under Part V of the Act in relation to those activities or the incapacity ceasing.

(3) A person who carries on relevant activities in the circumstances described in paragraph (1) must notify the Commissioners of this in writing and that notification must also include the date of death or the date and nature of the incapacity.

(4) This notification must be delivered to the Commissioners within 21 days starting with the day after the person begins carrying on the relevant activities.

(5) In this regulation, “relevant activities” refers to any activities in relation to which the individual in question is or was a registrable person.

Insolvency

56.—(1) The Commissioners may, for CCL purposes and subject to this regulation, treat a person who carries on relevant activities of a registrable person to whom an insolvency procedure is applied as if they were the same person.

(2) Such treatment may continue pending someone other than that registrable person being registered under Part V of the Act in relation to those activities or the insolvency procedure no longer being applied.

(3) A person who carries on relevant activities in the circumstances described in paragraph (1) must notify the Commissioners of this in writing and that notification must also include the date the insolvency procedure was first applied.

(4) This notification must be delivered to the Commissioners within 21 days starting with the day after the person begins carrying on the relevant activities.

(5) In this regulation—

“relevant activities” refers to any activities in relation to which the individual in question is or was a registrable person;

“registrable person” may include, as appropriate, the estate of a deceased individual.

6) An insolvency procedure is applied to a person for the purposes of this regulation in the circumstances described by paragraphs 120(7) to 120(9) of the Act (insolvency procedures for the purposes of this regulation).

Representatives: death, incapacity or insolvency

57.—(1) If the Commissioners so require, a representative who controls the assets of a registrable person because of death, incapacity or the application of an insolvency procedure shall, for the purposes of CCL and subject to this regulation, be treated as if he was the registrable person.

(2) Any requirement resulting from paragraph (1) for the representative to pay CCL shall only apply to the extent of the assets he controls.

(3) Any other requirement resulting from paragraph (1) shall apply in the same way as it would have applied to the registrable person but for the death, incapacity or insolvency procedure.

(4) In this regulation—

“relevant activities” refers to any activities in relation to which the registrable person in question is or was registrable;

“registrable person” may include, as appropriate, the estate of a deceased individual.

(5) An insolvency procedure is applied to a person for the purposes of this regulation in the circumstances described by paragraphs 120(7) to 120(9) of the Act (insolvency procedures for the purposes of this regulation).

Insolvency: consumers liable to penalty or interest

58.—(1) This regulation applies where, in relation to a person (“the consumer”)—

- (a) the Commissioners assess and notify an amount due by way of penalty from the consumer for conduct falling within paragraph 98 (evasion) or 101 (incorrect notification for exclusion or exemption) of the Act;
- (b) that amount or any penalty interest it carries remains unpaid; and
- (c) an insolvency procedure applies to the consumer.

(2) The person appointed for the purposes of the application of the insolvency procedure (“the appointee”) must notify the Commissioners of this in writing and that notification must also include the date the insolvency procedure first applied.

(3) This notification must be delivered to the Commissioners within 21 days starting with the day after the appointment takes effect or notice of the penalty or interest reaches the appointee, whichever is the later.

(4) Subject to this regulation, the appointee shall be treated to the extent and for the duration of the appointment as the same person as the consumer for the purposes of Part IX of the Act (civil penalties).

(5) An insolvency procedure is applied to a person for the purposes of this regulation in the circumstances described by paragraphs 120(7) to 120(9) of the Act (insolvency procedures for the purposes of this regulation).

Transfers of going concerns

59.—(1) Where—

- (a) a business carried on by a person who is registered under Part V of the Act is transferred to another person as a going concern,
- (b) the registration of the transferor has not been cancelled,
- (c) the transfer requires that the transferor’s registration be cancelled and that the transferee either be registered for CCL or notify the Commissioners that he is registrable for CCL, and
- (d) a written application for this purpose is made to the Commissioners by the transferor and transferee,

the Commissioners may, with effect from the date of the transfer, cancel the registration of the transferor and register the transferee in his place with the registration number previously allocated to the transferor.

(2) Should the Commissioners cancel the registration of the transferor and register the transferee in his place under paragraph (1) then, in order to secure continuity in the application of the Act—

- (a) any liability of the transferor existing at the date of the transfer to make a return or account for or pay CCL shall become the liability of the transferee;
- (b) any entitlement of the transferor, whether or not existing at the date of the transfer, to a tax credit or repayment under the Act, Part II of these Regulations or the Schedule to these Regulations shall become the entitlement of the transferee;
- (c) any other provision by or under the Act relating to CCL that applied to the transferor before his registration was cancelled (or any such provision that continues to apply to the transferor after that cancellation) shall apply to the transferee; and
- (d) any circumstances relating to the application of the Act (or any provision made under the Act) to the CCL affairs of the transferor before his registration was cancelled (or any such circumstances that continue to apply to the transferor after that cancellation) shall apply to the transferee.

(3) In addition to the provisions set out in paragraph (2), where—

- (a) the Commissioners cancel the registration of the transferor and register the transferee in his place under paragraph (1) with effect from a date earlier than the accounting period in which they do so, and
- (b) either the transferor or the transferee has, in relation to any time on or after that date but before the start of that accounting period—
 - (i) made a return,
 - (ii) accounted for CCL, or
 - (iii) claimed a relevant tax credit,

the matters referred to in sub-paragraphs (b)(i) to (b)(iii) shall be treated as having been done by the transferee.

PART VII

PENALTIES

60.—(1) A person who fails to comply with a requirement imposed on him by or under any of the following provisions of these Regulations shall be liable to a penalty of £250 for each such failure—

- (a) regulation 5(1), 5(2), 5(3) or 5(4);
- (b) regulation 6(2);
- (c) regulation 7(1), 7(2), 7(3) or 7(4);
- (d) regulation 8;
- (e) regulation 27(1) or 27(2);
- (f) regulation 28(6) or 28(8);
- (g) regulation 37(5);
- (h) regulation 38 and paragraph 4, 12(3), 14(1), 14(2), 15(a) or 15(b) of the Schedule;
- (i) regulation 55(3) or 55(4);
- (j) regulation 56(3) or 56(4);
- (k) regulation 58(2) or 58(3).

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(2) A specific act or omission shall attract only one such penalty if the circumstances are such that, but for this paragraph, it would attract more than one penalty.

PART VIII

CONSEQUENTIAL AMENDMENTS

61. In regulation 2(1) of the Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997⁽¹²⁾ under the meaning given for “relevant tax” insert—

“(f) climate change levy;”

New King’s Beam House,
22 Upper Ground,
London SE1 9PJ
9th March 2001

M. J. Eland
Commissioner of Customs and Excise

⁽¹²⁾ S.I. 1997/1431; no relevant amendments.

SCHEDULE

Regulation 38

CERTIFICATION AND MANNER OF PAYMENT OF CCL DUE IN THE CASE OF EXCLUDED, EXEMPT, HALF-RATE OR REDUCED-RATE SUPPLIES

Paragraphs 1–4	Basic rules.
Paragraph 5	Compulsory updates and corrections to CCL due.
Paragraphs 6–11	Tax credit for recipient.
Paragraphs 12–15	Miscellaneous: voluntary updates, change of supplier, delivery of information, record keeping.
	Signature
	Explanatory Note

Basic rules

1. This Schedule applies in relation to a supply to which regulation 34, 35 or 36 applies or that otherwise includes a reduced-rate part.
2. CCL shall not be due on the percentage of the supply properly determined in accordance with the following formula (the “CCL relief formula”):

$$P = \frac{C + M + 0.5H + 0.8R}{Q} \times 100$$

Notes

- P = the percentage of the supply on which CCL is not due (the “CCL relief percentage”) which must not be less than 0 per cent. nor more than 100 per cent.
- Q = the quantity of the taxable commodity supplied.

In the case of electricity:

- (a) Q includes any of that quantity that falls within the exclusion from CCL provided for by paragraph 9(2)(f)—community heating arrangements;
- (b) Q does not include any of that quantity, apart from as described in (a) above, that falls within the exclusion from CCL provided for by paragraph 8—domestic or charity use;
- (c) Q does not include any of that quantity that falls within the exemption from CCL provided for by or under paragraph 16 or 19—electricity up to specified limit from partly exempt combined heat power station or electricity from renewable source.

In all cases, Q does not include any quantity referable to exclusions under paragraph 8 (domestic or charity use) but does include any such quantity referable to the exclusion provided for by paragraphs 8 and 9(2)(f) (community heating arrangements).

- C = the quantity of the taxable commodity referable to the sum of every relevant excluded part (paragraphs 8 and 9(2)(f)—community heating arrangements).
- M = the quantity of the taxable commodity referable to the sum of every exempt part:
- (a) paragraph 11—onward supplies and exports;

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- (b) paragraph 12—transport;
- (c) paragraph 13—commodity producers;
- (d) paragraph 14—electricity producers;
- (e) paragraph 15—combined heat and power stations;
- (f) paragraph 18—non-fuel use;
- (g) paragraph 21—regulation 41 of these Regulations (or other relevant regulations made under that paragraph of the Act to avoid double charges to CCL).

0.5H = 50% of the quantity of the taxable commodity referable to the sum of every half-rate part (paragraph 43—horticultural producers).

0.8R = 80% of the quantity of the taxable commodity referable to the sum of every reduced-rate part (paragraph 44—climate change agreement).

The paragraph numbers referred to in these notes refer to the relevant paragraphs in Schedule 6 to the Finance Act 2000.

3.—(1) Any supplier certificate delivered by the recipient shall represent to the best of the recipient’s judgment any information required by regulation 34(2) (exclusions and exemptions), regulation 35(2) (half-rates), regulation 36(2) (certain reduced-rates) or regulation 37(3) (combinations).

(2) A supplier certificate may relate to more than one supply (subject to Part III of these Regulations and the other provisions of this Schedule).

(3) Accordingly, if it relates to more than one supply, a supplier certificate shall provide a recipient’s relief percentage based on—

- (a) the likely number of supplies to which it will relate,
- (b) the likely quantity of the taxable commodity in question that will be supplied to him by the supplier if those supplies are made, and
- (c) any other relevant circumstances.

4. The supplier shall apply the CCL relief percentage to any supply he makes to which the supplier certificate relates and may, for this purpose, rely on the percentage (the “recipient’s relief percentage”) provided by the recipient in accordance with regulation 38(2).

Compulsory updates and corrections to CCL due

5.—(1) The recipient shall review the correctness of the supplier certificate no later than the earlier of—

- (a) the sixtieth day after the expiry of one year starting from its implementation date, or
- (b) the sixtieth day after the recipient has burned (or, in the case of electricity, consumed) the last of the taxable commodity supplied to which the supplier certificate relates.

(2) That correctness shall be reviewed in relation to—

- (a) (if sub-paragraph (1)(a) applies), the elapsed period of one year starting with the implementation date (and this period is referred to in sub-paragraph (3) as the “review period”), or
- (b) (if sub-paragraph (1)(b) applies), the CCL relief percentage calculated on the basis of actual events.

(3) If—

- (a) the review demonstrates that the supplier certificate was correct, and

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- (b) that certificate also relates to supplies made or to be made by the supplier after the end of the review period,

that supplier certificate shall be regarded for the purposes of Part III of these Regulations and this Schedule as having as its implementation date the anniversary of its original implementation date (and sub-paragraphs (1) and (2) shall apply accordingly).

(4) Sub-paragraphs (5) to (10) apply if the review demonstrates that the supplier certificate was incorrect.

(5) If the supplier certificate was incorrect because the CCL relief percentage applied was too low, the recipient may act in accordance with paragraphs 6 to 10 (provision for tax credits) (subject to paragraph 11).

(6) Sub-paragraph (9) applies if—

- (a) the certificate was incorrect because the CCL relief percentage applied was too high, but
- (b) the recipient—

- (i) delivers an updated supplier certificate in accordance with Part III of these Regulations and this Schedule such that the error is corrected within one year starting with the last day on which he could have complied with paragraph (1);
- (ii) corrects the error by making an appropriate adjustment under regulation 5(1)(b) (adjustment in CCL return) in relation to an accounting period of his ending no later than six months after the last day on which he could have complied with sub-paragraph (1);
- (iii) makes good to the Commissioners within thirty days, starting from the last day on which he could have complied with sub-paragraph (1), the deficiency in the CCL charged on the supplies as a result of the certificate having been incorrect.

(7) Sub-paragraph (6)(b)(ii) only applies if the recipient is a registrable person and sub-paragraph (6)(b)(i) cannot apply.

(8) Sub-paragraph (6)(b)(iii) only applies if sub-paragraphs (6)(b)(i) and (6)(b)(ii) cannot apply.

(9) If—

- (a) the recipient complies with sub-paragraph (6)(b) (subject to sub-paragraphs (7) and (8)), and
- (b) the certificate in question was incorrect by less than 20 percentage points,

the Commissioners may be satisfied, for the purposes of paragraph 101 of the Act (civil penalty for incorrect certification, etc.), that the recipient had a reasonable excuse for having given the supplier certificate in question.

(10) If the recipient does not review the accuracy of the supplier certificate in accordance with sub-paragraph (1), and the certificate was (or remains) incorrect, paragraph 101 of the Act shall apply accordingly (civil penalty for incorrect certification, etc. subject to reasonable excuse).

(11) This paragraph only applies in relation to a supply or supplies to which regulation 34 or 35 applies (supplier certificates for exclusions, exemptions and half-rates).

Tax credits for recipient

6.—(1) The recipient in each of the following cases is entitled to a tax credit in respect of any relevant amount of CCL charged on the supply in question (subject to paragraph 5(5) and the other provisions of this Schedule including those provisions relating to the making of a relevant claim to the Commissioners)—

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- (a) after a taxable supply has been made, there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would not have been a taxable supply;
 - (b) after a supply of a taxable commodity is made on the basis that it is a taxable supply, it is determined that the supply was not (to any extent) a taxable supply;
 - (c) after a taxable supply has been made on the basis that it was neither a half-rate supply nor a reduced-rate supply, it is determined that the supply was (to any extent) a half-rate or reduced-rate supply;
 - (d) CCL is accounted for on a half-rate supply as if the supply were neither a half-rate supply nor a reduced-rate supply;
 - (e) after a charge to CCL has arisen on a supply of a taxable commodity ("the original commodity") to a person who uses the commodity supplied in producing taxable commodities primarily for his own consumption, that person makes supplies of any of the commodities in whose production he has used the original commodity.
- (2) In sub-paragraph (1), "relevant amount of CCL" refers to the difference between—
- (a) the amount of CCL that ought to have been charged by or under the Act at the time of supply had the supplier certificate been correct, and
 - (b) the amount of CCL that the supplier accounted for (or ought to have accounted for) on the basis of the incorrect supplier certificate.
7. A tax credit shall only arise under paragraph 6 if a claim is made by the recipient acting in accordance with paragraph 8 or 9, as the case requires.
- 8.—(1) Subject to sub-paragraph (4), the recipient shall claim any such tax credit—
- (a) by bringing it into account by way of a proper allowance in or adjustment to a supplier certificate delivered by him subsequent to the review required by paragraph 5(1) or, if he changes supplier, any supplier certificate he delivers to his new supplier, or
 - (b) by bringing it into account when he is accounting for CCL due from him for any accounting period (but only to the extent that he is unable to make a claim under sub-paragraph (a)).
- (2) Accordingly, in the case of a claim under sub-paragraph (1)(b)—
- (a) the requirements of regulation 5 (content of returns), regulation 6 (payment of CCL) and regulation 7 (CCL accounts) apply subject to sub-paragraph (1)(b); but
 - (b) sub-paragraph (1)(b) applies subject to regulation 27 (corrections) and regulation 28 (corrections not exceeding £2,000).
- (3) A claim subject to sub-paragraphs (1) and (2) shall be regarded as a claim for repayment of CCL for the purposes of paragraph 64 of the Act (supplemental provisions about repayments, etc.) (and see sub-paragraph (4)).
- (4) Where the total tax credit claimed by a recipient exceeds the total of any CCL due from him for the accounting period in question, or the recipient is otherwise unable to bring a tax credit wholly into account under sub-paragraph (1)(b), the Commissioners shall repay to him an amount equal to the excess (but see regulations 29 and 30).
- (5) Given the provision made by paragraph 62(4) of the Act, this paragraph has effect subject to paragraph 64 of the Act (application of supplemental provisions about repayments: three year time limit, unjust enrichment, etc.).
- (6) A recipient shall not be regarded as being unable to make a claim under sub-paragraph (1) (a) or (1)(b) by reason only of this paragraph having effect subject to paragraph 64 of the Act (three year time limit, etc.).

9.—(1) Where the recipient is unable to make a claim in accordance with paragraph 8(1), the Commissioners shall repay to him the amount of the tax credit if they are satisfied that he has made a proper claim to them in writing for this purpose.

(2) A recipient making a claim under sub-paragraph (1) must furnish to the Commissioners full particulars in relation to the tax credit claimed, including (but not limited to)—

- (a) any relevant supplier certificate on the basis of which the relevant CCL was accounted for by the supplier;
- (b) any relevant analysis document supporting any such supplier certificate;
- (c) the amount of the CCL in question and the date and manner of its payment to the Commissioners whether by the recipient, the supplier or otherwise;
- (d) the circumstances, events, records and documentary or other evidence by virtue of which the recipient claims that any relevant entitlement to a tax credit arises;
- (e) the period of time by reference to which the recipient consumed the relevant taxable commodity or was supplied with the relevant taxable commodity by the supplier to whom he delivered the relevant supplier certificate; and
- (f) any matter, item or particular in any way relevant to the question whether or not a tax credit arises under this Schedule in favour of the recipient.

(3) Where the Commissioners are satisfied that a person who has made a claim in accordance with sub-paragraphs (1) and (2) is entitled to a tax credit and that he has not previously had the benefit of that credit, they shall repay to him an amount equal to the credit (but see regulations 29 and 30).

(4) The Commissioners shall not be liable to make any repayment under this regulation unless and until the recipient has made all the returns, if any, which he was required to make (but see regulation 29 and 30).

(5) Given the provision made by paragraph 62(4) of the Act, this regulation has effect subject to paragraph 64 of the Act (application of supplemental provisions about repayments: three year time limit, unjust enrichment, etc.).

(6) Accordingly, for the purposes of sub-paragraph (1), a recipient shall not be regarded as being unable to make a claim under paragraph 8(1) by reason only of this paragraph having effect subject to paragraph 64 of the Act (three year time limit, etc.).

10. If and to the extent that they may be relevant for the purposes of this Schedule, regulations 19 to 25 (unjust enrichment: reimbursement arrangements to be disregarded) shall apply in relation to a tax credit provided for by this Schedule as if—

- (a) the reference in regulation 19 to “claim” included a claim made under this Schedule; and
- (b) the references in those regulations to “(recipient)” or “(recipients)” were not present.

11. No tax credit shall arise under Part II of these Regulations where provision for a tax credit is made in this Schedule.

Miscellaneous

12.—(1) The recipient may deliver to the supplier a further certificate updating the information in the original supplier certificate in the light of actual or anticipated events—

- (a) after 3 months from when the original supplier certificate was delivered to the supplier or last updated under this paragraph, or
- (b) within 30 days after a significant change in circumstances.

(2) For the purposes of sub-paragraph (1)(b), a change of circumstances is significant only if it would result in the existing value for the recipient’s relief percentage having to be revised by at least 20 percentage points.

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(3) The supplier shall then apply the CCL relief percentage to any supplies he makes to which the updated supplier certificate relates and may, for this purpose, rely on the relevant recipient's relief percentage as updated.

(4) Paragraphs 5 (compulsory updates) and 6 (recipient's tax credits) have effect subject to any updates made by the recipient under this paragraph.

(5) Any provision of these Regulations, including this Schedule, that applies to or in relation to a supplier certificate shall apply to or in relation to such a supplier certificate as updated under this paragraph.

13.—(1) Where a recipient changes supplier, any supplier certificate delivered to any earlier supplier (and any supporting analysis document) shall not have effect in relation to supplies from the later supplier.

(2) In these circumstances, paragraphs 5 to 11 shall apply in relation to the combined effect of the supplier certificate the recipient delivered to the earlier supplier and the supplier certificate he delivers to the later supplier.

14.—(1) A supplier to whom a supplier certificate is delivered shall, within 90 days starting with the day after it is delivered, deliver to the Commissioners in writing a summary of the information contained in that certificate.

(2) The supplier shall include in that summary—

- (a) such information as is necessary to identify the recipient in question,
- (b) such information as is necessary to identify each address to which the supplies in question are supplied, and
- (c) the relevant recipient's relief percentage and, if different, the CCL relief percentage actually applied by the supplier to the supplies in question.

15. A recipient who delivers a supplier certificate shall—

- (a) retain a copy for a period of six years starting with the time of supply of the final supply to which it relates,
- (b) retain any relevant analysis document for a period of six years starting with the time of supply of the final supply to which it relates, and
- (c) make a copy of any such certificate and analysis document available to the Commissioners on request.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations make further provision for climate change levy (CCL) following the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001(13). These Regulations have effect from the introduction of CCL on 1st April 2001.

(13) S.I. 2001/7.

2. The provision made for things like payment and record-keeping echo those in force for other taxes and duties administered by Customs and Excise. Accordingly regulations 3 to 6 require relevant traders to make returns and pay the CCL due from them in accordance with their allocated accounting periods (usually quarterly). Regulations 7 to 9 require the traders to keep proper records for up to six years. Regulations 10 to 33 provide mechanisms for adjusting, correcting or properly establishing the amount of CCL paid or due.

3. Regulations 34 to 39, 43 and the Schedule provide for the administration of CCL exclusions, exemptions and lower rates. Customers must certify entitlement as necessary and calculate the proportional reduction in the CCL due. Suppliers can then act on this information to calculate the appropriate reduction in the CCL they must pay to Customs. Both customers and suppliers must provide Customs with relevant data. The customer is responsible for periodically reviewing the reduction claimed and making the necessary adjustments or corrections. The customer must therefore keep proper records.

4. Supplies for the production of a range of commodities is exempt from CCL(14). Regulation 40 provides a non-exhaustive list of those activities that are too remote from the production process to qualify for the exemption.

5. Regulations 41, 42 and 45 avoid a double charge to CCL and facilitate the enjoyment of the half-rate(15) and reduced-rate(16) of CCL. In each case a mischief would otherwise arise because of a supply made by or to an electricity supplier whose purchases of taxable commodities are not generally exempt from CCL.

6. Regulation 44 enables solid fuel and LPG to be delivered for storage away from a facility covered by a climate change agreement without loss of the reduced-rate of CCL.

7. Regulations 47 and 48 prescribe the initial generation and certification requirements on which the exemption for renewable source electricity(17) depends. Regulations 49 to 51 prescribe the continuing and other administrative requirements for that exemption. The Gas and Electricity Markets Authority and the Director General of Electricity Supply for Northern Ireland have a significant regulatory role to play starting from before the electricity is generated and only ending well after it has been consumed.

8. Regulation 52 ensures that producers of electricity in large scale hydro generating stations or nuclear power stations do not escape CCL if they consume any of that electricity themselves.

9. Regulation 53 prescribes limits above which a person is not a small-scale user of electricity or gas. This affects the frequency with which a supplier must issue a climate change levy accounting document to that person(18).

10. Regulation 54 makes provision for the early termination of a special utility scheme (a scheme for determining when supplies of electricity or gas take place)(19).

11. Regulations 55 to 59 again echo older provisions in force for other taxes and duties. They relate to representation in the case of death, incapacity or insolvency and the transfer of a business as a going concern.

12. A breach of these Regulations may lead to a penalty under regulation 60 or, in certain cases, under Schedule 6 to the Finance Act 2000.

(14) Paragraphs 13 and 14(1) of Schedule 6 to the Finance Act 2000 (c. 17).

(15) Paragraph 43 of Schedule 6 to the Finance Act 2000.

(16) Paragraph 44 of Schedule 6 to the Finance Act 2000.

(17) Paragraphs 19 and 20 of Schedule 6 to the Finance Act 2000.

(18) Paragraph 27 of Schedule 6 to the Finance Act 2000.

(19) Paragraph 29 of Schedule 6 to the Finance Act 2000.

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13. Regulation 61 is included to allow the levying of distress for the recovery of CCL⁽²⁰⁾.

⁽²⁰⁾ CCL is made a “relevant tax” for the purposes of S.I. 1997/1431. For enforcement by diligence in Scotland, see section 52 of the Finance Act 1997 (c. 16) as amended by paragraph 7 of Schedule 7 to the Finance Act 2000.