

FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

Section 207 Schedules 30 to 32: Climate Change Levy

Summary

1. [Section 207](#) and Schedules 30 to 32 amend climate change levy (CCL) provisions.

Schedule 30 – Climate change levy

2. This Schedule is split into three parts.
 - Part 1 retrospectively amends Schedule 6 to the Finance Act (FA) 2000 (“Schedule 6”) to provide that the amount of CCL payable on a supply that has been treated as a reduced rate supply, but which it is later determined should not have been, is 65 per cent with effect from 1 April 2011.
 - Part 2 amends Schedule 6 by replacing the suspended exemption from the CCL for taxable commodities used in metal recycling processes with a 20 per cent lower rate from 1 April 2012.
 - Part 3 amends the rates of levy set out in Schedule 6, including the reduced rate on supplies of electricity and the lower rate for Northern Ireland gas supplies, with effect from 1 April 2013.

Schedule 31 – Climate change levy: climate change agreements

3. This Schedule amends Schedule 6 to make changes to the administration of the climate change agreement (CCA) scheme from 1 April 2013. Participants in the scheme are entitled to a discount from the CCL in return for meeting energy efficiency or emission reduction targets.

Schedule 32 – Climate change levy: supplies subject to the carbon price support rates and combined heat and power stations

4. This Schedule is split into three parts. Part 1 amends Schedule 6 to:
 - introduce a generating capacity threshold at an electricity generating station or combined heat and power (CHP) station below which supplies are exempt from the carbon price support (CPS) rates of CCL;
 - introduce an exemption from CCL for all coal used at generating stations with a gross calorific value of 15 gigajoules per tonne or less;
 - provide for CPS rates of CCL to be charged on the supplies of gas, liquefied petroleum gas (LPG) and coal used in producing electricity in a CHP station;
 - require power generators liable to account for CPS rates of CCL to self-account;

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- amend one of the taxable commodities for the CPS rates of CCL to coal, and amend the basis of the charge from weight (i.e. per kilogram) to heat (i.e. per gigajoule);
- introduce an abated rate for supplies of fossil fuels to power generating stations equipped with carbon capture and storage (CCS) technology;
- provide for Treasury regulations to determine the extent to which a supply to a CHP station is attributable to the production of electricity;
- provide for Commissioners' regulations to determine whether, and to what extent, there should be a reduction in CPS rates on supplies to generating stations with CCS technology; and
- make some consequential changes to Schedule 6.

All these changes will have effect on and after 1 April 2013.

5. **Part 1** also provides for the Treasury to make regulations to exempt from CCL (including the CPS rates) fossil fuels used in a CHP in producing good quality outputs, except where the output is electricity (meaning that this exemption will mainly cover inputs used to produce heat). The exemption will come into force following discussions with the Commission about State aid, but in any case not before 1 April 2013.
6. **Part 1** of the Schedule also contains a provision to prevent forestalling.
7. **Part 2** of the Schedule introduces the CPS rates for gas, LPG and coal from 1 April 2014.
8. **Part 3** of the Schedule provides for the ending of the exemption from CCL for electricity produced in either a fully-exempt or a partly-exempt CHP station that is supplied by an electricity utility to an energy consumer, with effect from 1 April 2013. As a result of this Schedule and regulations to be laid later in 2012, any electricity acquired by an electricity utility from a generator after that date will not be eligible for the exemption. However, if the electricity was generated in an eligible CHP station before that date and equivalent amounts of electricity are supplied to a final energy consumer, an electricity utility will be able to exempt the supply up to and including 31 March 2018.

Details of the Schedules

Schedule 30 – Climate change levy

9. Paragraph 1 amends the figure set out in paragraph 45A(2)(b) of Schedule 6 (which deals with circumstances in which a supply has been treated as a reduced rate supply but which it is later determined should not have been) from “80” to “65” with retrospective effect from 1 April 2011. The effect is that the amount payable by way of levy on such supplies is, from that date, 65 per cent of the amount that would be payable if the supply were not a reduced rate supply.
10. **Paragraph 2** provides for the amendment of Schedule 6.
11. **Paragraphs 3, 4, 5, 8 and 9** make consequential amendments to paragraphs 4, 5, 6, 34 and 39 of Schedule 6 respectively as a result of the omission of paragraph 45A from, and the addition of new paragraph 43B to, Schedule 6.
12. **Paragraph 6** amends paragraph 14(3A)(a) of Schedule 6 to remove the reference to the exemption for supplies used in recycling processes.
13. **Paragraph 7** removes paragraph 18A of Schedule 6 to repeal the exemption for supplies used in recycling processes.
14. **Paragraph 10** amends paragraph 42 of Schedule 6 to provide that the full rates of levy will not apply to supplies for use in scrap metal recycling and, instead, a rate of 20 per cent of the full rates will apply. It also inserts new sub-paragraph (1ZA) into the same

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paragraph to provide that where supplies are both reduced-rated supplies and eligible for the new lower rate by virtue of being for use in scrap metal recycling, the amount of levy payable is the lower of the two rates.

15. [Paragraph 11](#) inserts new paragraphs 43A and 43B into Schedule 6.
 - New paragraph 43A specifies the conditions for determining whether a supply is for use in scrap metal recycling, including the requirement for a competing process that is eligible for exemption under paragraph 18 of Schedule 6; the limitation that “metal” means only aluminium and steel; and the limitation that recycling includes only the shredding or fragmentation, pre-heating and first melting of the metal, or its heating in the course of recycling, before solidification.
 - New paragraph 43B provides that where an excess of relief has been received the recipient is deemed to have made a taxable supply to itself and must account for the levy due on that supply.
16. [Paragraph 12](#) omits paragraph 45A of Schedule 6 (reduced-rate supplies: deemed supply) because the deemed supply provisions in new paragraph 43B apply to both reduced-rated supplies and supplies used in scrap metal recycling.
17. [Paragraph 13](#) inserts new sub-paragraphs (ca) and (cb) into paragraph 62(1)(c) of Schedule 6 to provide that a relief recipient may claim a tax credit where too little levy relief was received.
18. [Paragraph 14](#) removes the reference to paragraph “18A” in paragraph 101(2)(a) of Schedule 6 as a consequence of the repeal of the exemption, and adds new sub-paragraph (iiia) to that paragraph to provide that the recipient of the supply will be liable to a penalty where the certificate given to their supplier claiming the lower rate was, or becomes, incorrect.
19. [Paragraph 15](#) removes the reference to paragraph “18A” in paragraph 146(3) of Schedule 6, which deals with the making of regulations, as a consequence of the repeal of the exemption for supplies for use in recycling processes.
20. [Paragraph 16](#) removes the reference to paragraph “18A” in paragraph 147 of Schedule 6, which deals with interpretation, and defines “a supply for use in scrap metal recycling” by reference to new paragraph 43A(1).
21. [Paragraph 17](#) repeals section 188 of FA 2003, which introduced the exemption for supplies for use in recycling processes.
22. [Paragraph 18](#) inserts a reference to metal recycling in section 79(2) of FA 2011 to provide that, where the supply takes place in Northern Ireland, the lower rate for supplies for use in recycling processes takes precedence over the lower rate for supplies of gas. It also repeals section 80 of FA 2011, which suspended the exemption.
23. [Paragraph 19](#) provides for the amendments made by paragraphs 2 to 18 of this Schedule to come into effect for supplies of taxable commodities actually made on or after 1 April 2012.
24. [Paragraph 20](#) inserts a new sub-paragraph (ba) into paragraph 42(1) of Schedule 6 to provide for the level of CCL payable on reduced-rate supplies of electricity only to be 10 per cent. It also replaces the table of rates and makes consequential amendments.
25. [Paragraph 21](#) amends the deemed supply provisions in paragraph 43B of Schedule 6 in consequence of the introduction of the new reduced rate for supplies of electricity.
26. [Paragraph 22](#) amends section 79(3)(a) of FA 2011 to revise the rate of CCL applying to gas supplies in Northern Ireland before 1 November 2013.
27. [Paragraph 23](#) provides for the changes in paragraphs 20 to 22 of this Schedule to have effect for supplies treated as taking place on or after 1 April 2013.

Schedule 31 – Climate change levy: climate change agreements

28. Paragraph 1 provides for the amendment of Schedule 6.
29. Paragraph 2 substitutes “Administrator” for “Secretary of State” in paragraphs 44(1) (a), (2A) and (2C) of Schedule 6 to ensure that the reduced rate of levy applies where the Administrator issues and varies certificates.
30. Paragraph 3 substitutes “Administrator” for “Secretary of State” in paragraph 45(1) of Schedule 6 to provide for the issue of variation certificates by the Administrator.
31. Paragraph 4 substitutes “Administrator” for “Secretary of State” in paragraphs 45B(2) and 45B(6) of Schedule 6 to provide for the Administrator to certify unsatisfactory progress towards meeting targets.
32. Paragraph 5 removes the words “with Secretary of State” in the heading before paragraph 47 of Schedule 6.
33. Paragraph 6 amends paragraph 47(1) of Schedule 6 to provide that direct agreements will be made with the Administrator rather than the Secretary of State and contain any terms required by regulations, and to provide that the Administrator will review targets seven-yearly or more frequently.
34. Paragraph 7 amends paragraph 48 of Schedule 6 to provide that where there is a combination of umbrella and underlying agreements under the CCA scheme, both kinds of agreements will be entered into with the Administrator, who will also review targets seven-yearly or more frequently. It also provides that the agreements must contain any terms required by regulations.
35. Paragraph 8 makes a number of consequential amendments to paragraph 49 of Schedule 6.
36. Paragraph 9 inserts the following new paragraphs into Schedule 6:
 - Paragraph 52A provides for one or more bodies to be appointed as the Administrator(s) of the scheme by regulations made by the Secretary of State.
 - Paragraph 52B provides for the Administrator to administer the scheme in accordance with paragraphs 44 to 52 of Schedule 6.
 - Paragraph 52C provides for the Administrator to charge fees, with the consent of the Secretary of State, to recover costs incurred in carrying out its administrative function.
 - Paragraph 52D provides for the Secretary of State to make regulations, give directions and issue guidance concerning the administration of the scheme.
 - Paragraph 52E provides for the regulations to specify the terms of the umbrella and underlying agreements under the CCA scheme and to provide for a buy-out fee to be paid to the Administrator to make up for a lack of satisfactory progress towards meeting targets.
 - Paragraph 52F provides for the regulations to give the Administrator the power to impose financial penalties for contravening a term of an agreement and to terminate agreements if the financial penalty is not paid or the contravention is not remedied. Any regulations made must also confer the right of appeal against decisions to impose penalties or to terminate agreements for failing to pay a penalty or failing to remedy a contravention. The paragraph also provides for regulations to give the Administrator the power to terminate an agreement in specified circumstances not involving a contravention of it.
37. Paragraph 10 amends paragraph 137 of Schedule 6 to add the Administrator of the scheme to the list persons to whom the Commissioners for Revenue and Customs can

disclose information obtained or held by them in or in connection with the carrying out of their functions in relation to CCL.

38. [Paragraph 11](#) provides for the changes contained in this Schedule to have no impact on CCAs entered into before the Finance Bill (FB) receives Royal Assent.

Schedule 32 – Climate change levy: supplies subject to the carbon price support rates and combined heat and power stations

39. [Paragraph 1](#) provides for the amendment of Schedule 6.
40. [Paragraph 2](#) amends paragraph 4(2)(b) of Schedule 6 so that deemed supplies under paragraphs 42C and 42D are included in the definition of “taxable supply”.
41. [Paragraph 3](#) amends paragraphs 6(1A) and (2A) of Schedule 6 to make the supply of gas to CHP stations (including deemed supplies under paragraphs 42C and 42D) liable to the CPS rates of CCL.
42. [Paragraph 4](#) inserts four new sub-paragraphs into paragraph 14 of Schedule 6. New sub-paragraph (6) introduces a non-CHP station generating capacity threshold of 2 megawatts below which generators will be exempt from paying CCL. New sub-paragraphs (7) and (8) provide that it is the combined capacity of all generating stations (including CHP stations) owned by connected persons that should be taken into account in determining whether the threshold has been reached. New sub-paragraph (9) introduces an exemption from CCL for all coal used at non-CHP generating stations with a gross calorific value of 15 gigajoules per tonne or less.
43. [Paragraph 5](#) amends paragraph 15 of Schedule 6 so that the exemption in that paragraph applies only to the supply of electricity. It also introduces the same provisions for a CHP station that are introduced by paragraph 4 for non-CHP generating stations.
44. [Paragraph 6](#) inserts a new paragraph 15A into Schedule 6. It provides that, in relation to a supply of a taxable commodity in sub-paragraph (2) to a person who intends to cause the commodity to be used in producing any outputs of a CHP station, the Treasury may by regulations determine the extent to which the part of the supply that is not attributable to the production of electricity (as determined in accordance with regulations made under new paragraph 42A(5B)) is exempt from CCL. It also provides that the first regulations made under this power may have retrospective effect. Sub-paragraph (7) fulfils the requirement of the European Union State aid General Block Exemption Regulation (Commission Regulation (EC) No 800/2008) (which permits the granting of an exemption) that the legislation providing for the aid must contain an express reference to that regulation.
45. [Paragraph 7](#) inserts two new sub-paragraphs into paragraph 24(4) of Schedule 6 to provide that where a supply was not treated as taxable when it should have been, or the recipient’s intentions change, the recipient is deemed to have made a supply to itself that is subject to the CPS rates.
46. [Paragraph 8](#) amends paragraph 26 of Schedule 6 and paragraph 9 inserts a new paragraph 28A into Schedule 6 to provide for the time of supply in respect of gas in cases where the person liable to account for the levy on the supply is the person to whom the supply is made.
47. [Paragraph 10](#) disapplies paragraph 29 of Schedule 6 (which deals with special utility schemes) in cases where new paragraph 28A applies.
48. [Paragraphs 11 and 12](#) make consequential amendments to paragraphs 34 and 39 of Schedule 6 respectively.
49. [Paragraph 13](#) amends paragraph 40 of Schedule 6 to require those making supplies that are liable to the CPS rates of CCL or who cause the taxable commodity to be used in a CHP station to self-account for the tax.

50. **Paragraph 14** amends paragraph 42A of Schedule 6 to make supplies of fossil fuels mentioned in the Table in sub-paragraph (5) to CHP stations that are attributable to the production of electricity liable to the CPS rates of CCL. It provides that the Treasury may make Regulations to determine the extent to which a supply of fossil fuels is attributable to the production of electricity in a CHP station. It also amends the taxable commodity “any other taxable commodity (apart from electricity)” to “coal” and amends the basis of taxation for this commodity from “per kilogram” to “per gigajoule”. It also amends sub-paragraph (7) to provide that, under regulations made under sub-paragraph (6), the Commissioners may include provision to determine whether or not paragraph 42B(2) applies (reduction in CPS rates on supplies to generating stations with CCS technology) and, if it does, to determine the reduction in the relevant carbon price support rate.
51. **Paragraph 15** inserts three new paragraphs 42B, 42C and 42D into Schedule 6.
- New paragraph 42B(1) provides for the new paragraph 42B(2) to apply for the purposes of determining the amount of CCL payable at the CPS rates where there is a supply of fossil fuels to an electricity generator who uses CCS technology in any calendar year.
 - New paragraphs 42B(2) and (3) reduce the CPS rates of CCL by the carbon capture percentage.
 - New paragraph 42B(4) specifies how a generating station’s “carbon capture percentage” is to be calculated.
 - New paragraph 42B(5) defines “generated carbon dioxide” for the purposes of new paragraph 42B(4).
 - New paragraph 42B(6) defines “carbon capture and storage technology” and “carbon dioxide”.
 - New paragraph 42B(7) provides for carbon dioxide captured by a generating station using CCS technology that leaks before it is permanently stored not to affect the station’s “carbon capture percentage” where the leak did not occur within the grounds of the station nor in any pipeline, facility or installation maintained by the operator of the station or a person connected to the operator.
 - New paragraph 42B(8) provides for carbon dioxide captured that has not leaked in any of the situations set out in new paragraph 42B(7) to be treated as permanently stored.
 - New paragraph 42B(9) provides for the “carbon capture percentage” where it is not a whole number to be rounded to the nearest whole number.
 - New paragraph 42C(1) provides for new paragraph 42C(2) to apply where a taxable supply of fossil fuels to a generating station has been made on the basis that the lower CPS rates of CCL provided for in new paragraph 42B(2) applied but it is later determined that either a) it should have been subject to the full CPS rate; or b) the level of reduction applied was too much.
 - New paragraph 42C(2) deems that where new paragraph 42C(1) applies, the recipient of the taxable supply makes a taxable supply to itself. The value of this self-supply is the difference between the amount calculated as now due and the amount originally paid.
 - New paragraphs 42D(1) and 42D(2) provide that where a supply is made on the basis that it is, or is to some extent, subject to the CPS rates and it is later determined that this basis was incorrect so that the amount paid on the supply was too low, the recipient is deemed to have made a supply to itself. The value of this self-supply is the difference between the amount calculated as now due and the amount originally paid.

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- Paragraph 16 amends paragraph 62(1) of Schedule 6 to provide for a recipient to reclaim the appropriate amount of CPS rate overpaid where: a) a taxable supply was made on the basis that it was not subject to a lower CPS rate and it is later determined that it should have been; b) the amount of reduction originally given under new paragraph 42B(2) was too small; or c) a taxable supply was made on the basis that it was, or was to some extent, subject to the CPS rates and it is later determined that this basis was incorrect.
52. Paragraphs 17 and 18 amend Schedule 20 to FA 2011 to provide that provisions relating to civil penalties where incorrect supplier certificates are issued in relation to the supplies of fossil fuels to either a CHP station or a power station fitted with CCS technology do not have effect, and make some consequential amendments.
 53. Paragraph 19 provides for paragraph 8 of Schedule 20 to FA 2011 (as amended by this Schedule) to apply in relation to amendments made by paragraphs 1 to 16 of this Schedule in the same way they applied to paragraphs 1 to 6 of Schedule 20. It also provides for special time of supply rules for supplies taking place between 21 March (Budget day) 2012 and 1 April 2013 of taxable commodities (other than of gas in a gaseous state) that will become liable to the CPS rates of CCL on and after 1 April 2013. These are designed to prevent avoidance of tax.
 54. Paragraph 20 amends paragraph 42A(5) of Schedule 6 (as amended by this Schedule) to introduce revised carbon price support rates for gas, LPG and coal; and provides for the revised rates to come into force on 1 April 2014.
 55. Paragraph 21 amends paragraph 20A(1) of Schedule 6 to insert new sub-paragraph (e) to provide that the exemption relates only to electricity actually supplied before 1 April 2018. It also amends paragraph 20A(4)(a) of Schedule 6 to provide that, for the purposes of paragraphs 20A and 20B of Schedule 6, only electricity produced in either a fully exempt or a partly exempt CHP station before 1 April 2013 is considered CHP electricity for the purposes of this exemption.
 56. Paragraph 22 provides for consequential repeals needed as a result of the amendments made by paragraph 21 and makes provision for the repeals made by paragraph 22 to come into force on the day appointed by HM Treasury in a statutory instrument.

Background Note

57. CCL is a tax on the non-domestic use of energy.
58. Under the CCA scheme introduced in 2001, specified energy intensive businesses were allowed to enter into agreements with the Department of Energy and Climate Change (DECC) to meet energy efficiency or emission reduction targets and, as a result, were entitled to pay the reduced rate of CCL on all taxable commodities. The existing CCA scheme is due to come to an end on 31 March 2013. The Government intends to extend the scheme to 2023. Schedule 31 makes changes to simplify the scheme's administration.
59. The reduced rate of CCL is currently 35 per cent for supplies of all taxable commodities. Schedule 30 amends this rate on supplies of electricity only to 10 per cent from 1 April 2013 to help mitigate the impacts of the carbon price floor on energy-intensive industry.
60. Schedule 30 amends the rates of levy from 1 April 2013, necessitating a corresponding increase to the lower rate on gas in Northern Ireland. The Schedule also introduces a 20 per cent lower rate for supplies of taxable commodities for use in certain aluminium and steel recycling processes from 1 April 2012 following State aid approval.
61. Budget 2011 announced that, following consultation, the Government would introduce a carbon price floor on 1 April 2013. This will be achieved by taxing fossil fuels used

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in electricity generation under the existing CCL and fuel duty regimes. Legislation to implement this policy in respect of CCL was enacted as section 78 of, and Schedule 20 to, the FA 2011. The section and Schedule 31 contain further legislation announced at Budget 2012 arising from further consultation with business after Budget 2011.

62. In April 2003 the CCL exemption for CHP-produced electricity supplied directly from the station that produced it to a final energy consumer was extended to include indirect supplies from a CHP (i.e. electricity supplied to an energy consumer other than by the CHP station that produced it). Following the proposed introduction of the carbon price floor and the expiry on 31 March 2013 of State aid approval for the indirect supplies element of the CHP exemption, Budget 2011 announced that from 1 April 2013 the indirect supplies exemption would end. However, in circumstances where electricity utilities have a credit balance of levy exemption certificates (which are used to evidence the production of CHP electricity), the Government will continue to allow CCL-exempt supplies to be made in order to use up that credit balance, but only until 31 March 2018.