

**EXPLANATORY MEMORANDUM TO THE
CLIMATE CHANGE LEVY (COMBINED HEAT AND POWER STATIONS)
REGULATIONS 2005**

2005 No.

- 1.** This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 The instrument makes new provision for:

- (a) the proportion of climate change levy (CCL) exemption applying to leviable fuel supplied to combined heat and power stations,
- (b) the amount of electricity from a partly exempt combined heat and power station that may be supplied exempt from CCL, and
- (c) the conditions that a combined heat and power station must satisfy to be certified as fully exempt for CCL purposes.

2.2 It also consolidates other existing provisions and revokes the relevant instruments.

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

None.

4. Legislative Background

4.1 The Finance Act 2000 Schedule 6 paragraph 15 originally provided for supplies of fuel to combined heat and power stations to be proportionately exempt from CCL on the basis of the station's certified efficiency compared with a given threshold efficiency.

The Finance Act 2003 section 189(2) amended paragraph 15 so that the efficiency percentage could be determined in accordance with regulations.

Regulation 3(2) provides for the efficiency percentage to be the station's actual efficiency percentage in the current calendar year under the Combined Heat and Power Quality Assurance Standard, Issue 1, November 2000.

4.2 The Finance Act 2000 Schedule 6 paragraph 16 provides CCL exemption for supplies of electricity from partly exempt combined heat and power stations up to a specified limit.

The limit for a given calendar year was based on the station's performance in the

previous calendar year. Regulation 4 specifies the limit by reference to the station's actual performance in the current calendar year under the Standard.

4.3 The Finance Act 2000 Schedule 6 paragraph 148(4) envisages that a station must satisfy prescribed conditions in order to be certified as fully exempt for CCL purposes.

Regulation 5 prescribes current performance factors under the Standard in place of certified criteria relating to the previous calendar year.

4.4 The remainder of the regulations consolidates the existing rules, revokes the old instruments and makes transitional arrangements.

Related instruments

4.5 The relevant administrative provisions in the Climate Change Levy (General) Regulations 2001 (S.I. 2001/838) will be amended by the Climate Change Levy (Miscellaneous Amendments) Regulations 2005.

EU legislation

4.6 The instrument now partly re-implements Articles 6, 15.1(c) and 15.1(d) of Council Directive 2003/96/EC (taxation of energy products and electricity) (OJ No L 283, 31.10.03, p 51). A transposition note is attached.

4.7 Those Articles did not of themselves require implementation because they were already reflected in the pre-existing national CCL legislation. The approach then (as now) is to provide total or partial CCL relief for supplies of energy products and electricity used for combined heat and power generation, and for supplies of electricity so generated, provided that national definitions are met for being 'environmentally-friendly'. The reliefs are given effect directly with subsequent reconciliation to ensure accuracy.

4.8 The Articles in question were considered by the EU Scrutiny Committees as follows:

Cleared by House of Lords – 9 December 2002

Debated in Standing Committee B, House of Commons – 27 October 1999
Cleared by House of Commons – 27 November 2002.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

John Healey, the Economic Secretary, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the draft Climate Change Levy (Combined Heat and Power Stations) Regulations 2005 are compatible with the Convention rights.

7. Policy background

7.1 The imposition of CCL is part of the United Kingdom's effort to combat climate change and play its part in the European Community's obligations under the Kyoto Protocol. The Protocol aims to reduce emissions of six greenhouse gases from developed countries between 2008-2012 by at least 5 per cent below 1990 levels. The European Union and its member States agreed to a burden-sharing agreement of an 8 per cent reduction in greenhouse gas emissions by 2012. As part of this agreement the United Kingdom has taken on a reduction of 12.5 per cent.

7.2 The nature and logic of CCL requires favourable treatment for energy-efficient electricity generation. Combined heat and power generation can be more energy-efficient than other forms of generation, so supplies of electricity so generated are not in principle subject to CCL. Efficiency is further encouraged in two ways. First, the exemption for supplies of generation fuel to the station is adjusted in line with the station's efficiency. Secondly, the quantity of electricity that may be supplied exempt is limited by the station's overall quality (including how the heat of generation is used).

7.3 The changes made by this instrument better align with current performance the CCL reliefs applying to combined heat and power stations.

7.4 The level of public interest will be restricted to those CHP stations that are assessed and certified under the Combined Heat and Power Quality Assurance (CHPQA) programme.

7.5 The changes are not politically important and the environment is unaffected as the efficiency and environmental performance of qualifying CHP stations is subject to determination under the CHPQA Standard, Issue 1, November 2000.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is absorbed within existing practices and there is no overall net cost to the Exchequer as a result of this amendment to the regulations.

9. Contact

David Godfrey at HM Customs and Excise Tel: 0161 827 0335 or e-mail: dave.godfrey@hmce.gsi.gov.uk can answer any queries regarding the instrument on behalf of the Treasury.

Transposition Note about the application to electricity, gas and solid fuels of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity

Directive

Council Directive 2003/96/EC is concerned with the taxation (excluding value added tax) of energy products and electricity, and extends the system for the taxation of mineral oils to all energy products, in particular to products which are direct or indirect substitutes for mineral oils, for example: coke, lignite, and products derived from them; natural gas; and electricity.

The Directive establishes Community minimum levels of taxation as of 1 January 2004. Climate change levy was introduced on 1 April 2001 under section 30 of and Schedule 6 to the Finance Act 2000 (c. 17). Climate change levy (CCL) anticipated those Community minimum levels, but new national legislation will transpose the relevant provisions of the Directive as appropriate.

Articles	Objectives	Implementation
<p>15.1 (c) and (d)</p> <p>6.</p>	<p>Total or partial exemptions or reductions in the level of taxation may be applied under fiscal control to:</p> <p>Energy products and electricity used for combined heat and power generation, and</p> <p>electricity produced from combined heat and power generation, provided that the combined generators are environmentally-friendly. National definitions of 'environmentally-friendly' (or high efficiency) cogeneration production may be applied until the Council, on the basis of a report and a proposal from the Commission, unanimously adopts a common definition.</p> <p>Members states are free to give effect to the exemptions or reductions in the level of taxation prescribed by the Directive either:</p> <p>(a) directly,</p> <p>(b) by means of a differentiated rate, or</p> <p>(c) by refunding all or part of the amount of taxation.</p>	<p>Inputs to and electricity from combined heat and power stations can already benefit from total or partial, direct relief from CCL.</p> <p>Regulations 3, 4 and 5 of the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005 re-enact that the basis for determining the relief is the national definition of "Good Quality" Combined Heat and Power schemes in the Combined Heat and Power Quality Assurance Standard Issue 1, November 2000 originally published by the Department for the Environment, Transport and the Regions (and the associated Guidance Notes versions Final 1.0 or 2.0).</p> <p>They must be considered together with the Finance Act 2000 (c. 17) Schedule 6 paragraphs 15, 16, 147, 148 and 149.</p>

Responsibility

HM Treasury and Commissioners of Customs and Excise

