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**Status:** Point in time view as at 01/04/2002. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2000, Part II. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 6

#### CLIMATE CHANGE LEVY

#### PART II

#### TAXABLE SUPPLIES

##### *Introduction*

- 4 (1) A supply of a taxable commodity (or part of such a supply) is a taxable supply for the purposes of the levy if levy is chargeable on the supply under—  
paragraph 5 (supplies of electricity),  
paragraph 6 (supplies of gas), or  
paragraph 7 (other supplies in course or furtherance of business),  
and the supply (or part) is not excluded under paragraphs 8 to 10 or exempt under paragraphs 11 to 22.
- (2) In this Schedule—  
(a) references to a supply of a taxable commodity include a supply that is deemed to be made under paragraph 23, and  
(b) references to a taxable supply include a supply that is deemed to be made under paragraph 24,  
but paragraphs 23 and 24 have effect subject to any exceptions provided for under paragraph 21.

##### *Supplies of electricity*

- 5 (1) Levy is chargeable on a supply of electricity if—  
(a) the supply is made by an electricity utility, and  
(b) the person to whom the supply is made—  
(i) is not an electricity utility, or  
(ii) is the utility itself.
- (2) Levy is chargeable on a supply made from a combined heat and power station of electricity produced in the station if—  
(a) the station is a partly exempt combined heat and power station,  
(b) the supply is not one that is deemed to be made under paragraph 23(3) (self-supply by producer), and  
(c) the person to whom the supply is made is not an electricity utility.
- (3) Levy is chargeable on a supply of electricity that is deemed to be made under paragraph 23(3).

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- (4) Except as provided by sub-paragraphs (1) to (3), levy is not chargeable on a supply of electricity.

*Supplies of gas*

- 6 (1) Levy is chargeable on a supply of any gas if—
- (a) the supply is made by a gas utility, and
  - (b) the person to whom the supply is made—
    - (i) is not a gas utility, or
    - (ii) is the utility itself.
- (2) Levy is chargeable on a supply of gas that is deemed to be made under paragraph 23(3) (self-supply by producer) if the gas—
- (a) is held in a gaseous state immediately prior to being released for burning, and
  - (b) is of a kind supplied by a gas utility.
- (3) Except as provided by sub-paragraphs (1) and (2), levy is not chargeable on a supply of any gas that is supplied in a gaseous state.

*Other supplies made in course or furtherance of business*

- 7 (1) This paragraph applies to a supply of a taxable commodity other than—
- (a) electricity, or
  - (b) gas in a gaseous state.
- (2) Levy is chargeable on any such supply if the supply is made in the course or furtherance of a business.

*Excluded supplies: supply for domestic or charity use*

- 8 (1) A supply is excluded from the levy if it is—
- (a) for domestic use (see paragraph 9), or
  - (b) for charity use.
- (2) For the purposes of this paragraph, a supply is for charity use if the commodity supplied is for use by a charity otherwise than in the course or furtherance of a business.
- (3) If a supply is partly for domestic or charity use and partly not, the part of the supply that is for domestic or charity use is excluded from the levy.
- (4) Where a supply of a commodity is partly for domestic or charity use and partly not—
- (a) if at least 60 per cent. of the commodity is supplied for domestic or charity use, the whole supply is treated as a supply for domestic or charity use, and
  - (b) in any other case, an apportionment shall be made to determine the extent to which the supply is for domestic or charity use.

*Excluded supplies: meaning of “for domestic use”*

- 9 (1) For the purposes of paragraph 8 the following supplies are always for domestic use—
- (a) a supply of not more than one tonne of coal or coke held out for sale as domestic fuel;

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- (b) a supply to a person at any premises of—
    - (i) any gas in a gaseous state that is provided through pipes and is of a kind supplied by a gas utility, or
    - (ii) petroleum gas in a gaseous state provided through pipes,where the gas or petroleum gas (together with any other gas or petroleum gas provided through pipes to him at the premises by the same supplier) was not provided at a rate exceeding 4397 kilowatt hours a month;
  - (c) a supply of petroleum gas in a liquid state where the petroleum gas is supplied in cylinders the net weight of each of which is less than 50 kilogrammes and either the number of cylinders supplied is 20 or fewer or the petroleum gas is not intended for sale by the recipient;
  - (d) a supply of petroleum gas in a liquid state, otherwise than in cylinders, to a person at any premises at which he is not able to store more than two tonnes of such petroleum gas;
  - (e) a metered supply of electricity to a person at any premises where the electricity (together with any other electricity provided to him at the premises by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month;
  - (f) an unmetered supply of electricity to a person where the electricity (together with any other unmetered electricity provided to him by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month.
- (2) For the purposes of paragraph 8, supplies not within sub-paragraph (1) are for domestic use if and only if the commodity supplied is for use in—
- (a) a building, or part of a building, which consists of a dwelling or number of dwellings,
  - (b) a building, or part of a building, used for a relevant residential purpose,
  - (c) self-catering holiday accommodation (including any accommodation advertised or held out as such),
  - (d) a caravan,
  - (e) a houseboat (that is to say, a boat or other floating decked structure designed or adapted for use solely as a place of permanent habitation and not having means of, or capable of being readily adapted for, self-propulsion), or
  - (f) an appliance that—
    - (i) is not part of a combined heat and power station,
    - (ii) is located otherwise than in premises of a description mentioned in any of paragraphs (a) to (e), and
    - (iii) is used to heat air or water that, when heated, is supplied to premises of, or each of, such a description.
- (3) For the purposes of this paragraph use for a relevant residential purpose means use as—
- (a) a home or other institution providing residential accommodation for children,
  - (b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder,
  - (c) a hospice,
  - (d) residential accommodation for students or school pupils,

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- (e) residential accommodation for members of any of the armed forces,
- (f) a monastery, nunnery or similar establishment, or
- (g) an institution which is the sole or main residence of at least 90 per cent. of its residents,

except use as a hospital, a prison or similar institution or an hotel or inn or similar establishment.

<sup>F1</sup>(4) . . . . .

[<sup>F2</sup>(5) The power to make provision under section 29A(3) of the Value Added Tax Act 1994 varying Schedule 7A to that Act (charge at reduced rate) includes power to make provision for any appropriate corresponding variation of this paragraph.]

#### Textual Amendments

**F1** Sch. 6 para. 9(4) repealed (1.11.2001) by 2001 c. 9, s. 110, Sch. 33 Pt. 3(1)

**F2** Sch. 6 para. 9(5) inserted (1.11.2001) by 2001 c. 9, s. 99, Sch. 31 Pt. 2 para. 7

#### *Excluded supplies: supply before 1st April 2001*

10 Any supply made before 1st April 2001 is excluded from the levy.

#### *Exemption: supply not for burning in the UK*

11 (1) A supply of a taxable commodity to which this sub-paragraph applies is exempt from the levy if the person to whom the supply is made has, before the supply is made, notified the supplier—

- (a) that he intends to use the commodity in making supplies of it to any other person, or
- (b) that he intends to cause the commodity to be exported from the United Kingdom and has no intention to cause it to be thereafter brought back into the United Kingdom.

(2) Sub-paragraph (1) applies to supplies of a taxable commodity other than—

- (a) electricity, or
- (b) any gas in a gaseous state.

(3) A supply of electricity, or of gas in a gaseous state, is exempt from the levy if the person to whom the supply is made has, before the supply is made, notified the supplier that—

- (a) he intends to cause the commodity to be exported from the United Kingdom, and
- (b) has no intention to cause it to be thereafter brought back into the United Kingdom.

(4) Regulations under paragraph 22 may, in particular, include provision as to the application of sub-paragraph (3) in cases where a person who is both an exporter and an importer of a commodity intends to be a net exporter of the commodity.

#### *Exemption: Northern Ireland gas supplies*

<sup>F3</sup>11A A supply of gas is exempt from the levy if—

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- (a) the supply is made by a gas utility, and
- (b) the person to whom the supply is made intends to cause the gas to be burned in Northern Ireland.]

#### Textual Amendments

**F3** Sch. 6 para. 11A and cross-heading inserted (11.5.2001 with effect as mentioned in S. 105(7)) by 2001 c. 9, s. 105(2)(7)

#### *Exemption: supply used in transport*

- 12 (1) A supply of a taxable commodity is exempt from levy if the commodity is to be burned (or, in the case of electricity, consumed)—
- (a) in order to propel a train,
  - (b) in order to propel a non-railway vehicle while it is being used for, or for purposes connected with, transporting passengers,
  - (c) in a railway vehicle, or a non-railway vehicle, while it is being used for, or for purposes connected with, transporting passengers,
  - (d) in a railway vehicle while it is being used for, or for purposes connected with, transporting goods, or
  - (e) in a ship while it is engaged on a journey any part of which is beyond the seaward limit of the territorial sea.

Paragraphs (a) to (c) are subject to the exception in sub-paragraph (3).

- (2) In this paragraph—

“railway vehicle” and “train” have the meaning given by section 83 of the <sup>M1</sup>Railways Act 1993;

“non-railway vehicle” means—

- (a) any vehicle other than a railway vehicle, or
- (b) any ship,

that is designed or adapted to carry not less than 12 passengers.

- (3) Sub-paragraph (1)(a) to (c) does not apply in relation to the transporting of passengers to, from or within—

- (a) a place of entertainment, recreation or amusement, or
- (b) a place of cultural, scientific, historical or similar interest,

that is a place to which rights of admission, or where rights to use facilities at it, are supplied by the person to whom the commodity is supplied or by a person connected with him within the meaning of section 839 of the Taxes Act 1988.

#### Marginal Citations

**M1** 1993 c. 43.

#### *Exemption: supplies to producers of commodities other than electricity*

- 13 A supply of a taxable commodity to a person is exempt from the levy if—

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- (a) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3), and
- (b) the commodity is to be used by that person—
  - (i) in producing taxable commodities other than electricity,
  - (ii) in producing hydrocarbon oil or road fuel gas,
  - (iii) in producing, for chargeable use within the meaning of section 6A of the <sup>M2</sup>Hydrocarbon Oil Duties Act 1979 (fuel substitutes), liquids that are not hydrocarbon oil, or
  - (iv) in producing uranium for use in an electricity generating station.

For this purpose “hydrocarbon oil” and “road fuel gas” have the same meaning as in the <sup>M3</sup>Hydrocarbon Oil Duties Act 1979 and “liquid” has the same meaning as in section 6A of that Act.

#### Marginal Citations

**M2** 1979 c. 5.

**M3** 1979 c. 5.

*Exemption: supplies (other than self-supplies) to electricity producers*

- 14 (1) A supply of a taxable commodity to a person is exempt from the levy if—(a) the commodity is to be used by that person in producing electricity in a generating station that is neither—
- (i) a fully exempt combined heat and power station, nor
  - (ii) a partly exempt combined heat and power station,
- and
- (b) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3).
- (2) Sub-paragraph (1) does not exempt a supply where the person to whom the supply is made—
- (a) is an exempt unlicensed electricity supplier of a description prescribed by regulations made by the Treasury, <sup>F4</sup> . . .
  - (b) uses the commodity supplied in producing electricity [<sup>F5</sup>, and
  - (c) uses the electricity produced otherwise than in exemption-retaining ways.]
- (3) Sub-paragraph (1) does not exempt a supply where the person to whom the supply is made—
- (a) is an auto-generator,
  - (b) uses the commodity supplied in producing electricity, and
  - [<sup>F6</sup>(c) uses the electricity produced otherwise than in exemption-retaining ways.]
- [<sup>F7</sup>(3A) For the purposes of this paragraph, electricity is used in an “exemption-retaining” way if it is used—
- (a) in making supplies that are excluded under paragraphs 8 to 10 or exempt under any of paragraphs 11, 12 and 18, or
  - (b) in any of the ways mentioned in sub-paragraphs (i) to (iv) of paragraph 13(b).]

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- (4) In this paragraph “exempt unlicensed electricity supplier” means a person—
- (a) to whom an exemption from section 4(1)(c) of the <sup>M4</sup>Electricity Act 1989 (persons supplying electricity to premises) has been granted by an order under section 5 of that Act, or
  - (b) to whom an exemption from Article 8(1)(c) of the <sup>M5</sup>Electricity Supply (Northern Ireland) Order 1992 has been granted by an order under Article 9 of that Order,

except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the exemption.

- (5) Sub-paragraph (4) applies subject to—
- (a) any direction under paragraph 151(1), and
  - (b) any regulations under paragraph 151(2).

Exemption: supplies (other than self-supplies) to combined heat and power stations

#### Textual Amendments

- F4** Word in Sch. 6 para. 14(2)(a) repealed (11.5.2001) by 2001 c. 9, s. 110, Sch. 33 Pt. 3(3)
- F5** Sch. 6 para 14(2)(c) and preceding word inserted (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, s. 105(3)(7)
- F6** Sch. 6 para. 14(3)(c) substituted (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, s. 105(4)(7)
- F7** Sch. 6 para. 14(3A) inserted (11.5.2001) with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, s. 105(5)(7)

#### Marginal Citations

- M4** 1989 c. 29.
- M5** S.I. 1992/231 (N.I. 1)

- 15 (1) A supply of a taxable commodity to a person is exempt from the levy if—(a)<sup>F8</sup>that person intends to cause the commodity to be used]the commodity is to be used by that person in—

- (i) a fully exempt combined heat and power station, or
- (ii) a partly exempt combined heat and power station,

in producing any outputs of the station, and

- (b) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3).

For this purpose “outputs” has the meaning given by paragraph 148(9).

- (2) Where—

- (a) a supply of a taxable commodity to a person would (apart from this sub-paragraph) be exempted in full by sub-paragraph (1), and
- (b) at the time the supply is made, the efficiency percentage for the combined heat and power station in which the commodity is to be used <sup>F9</sup>... is less than the threshold efficiency percentage for the station,

sub-paragraph (1) only exempts the relevant fraction of the supply.

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- (3) For the purposes of sub-paragraph (2), the “relevant fraction” of a supply of a taxable commodity that is to be used in a combined heat and power station is the fraction—
- (a) whose numerator is the efficiency percentage for the station at the time the supply is made, and
  - (b) whose denominator is the threshold efficiency percentage for the station at that time.
- (4) For the purposes of this paragraph—
- (a) the “threshold efficiency percentage” for a combined heat and power station is the percentage set as the threshold efficiency percentage for the station by regulations made by the Treasury;
  - (b) the “efficiency percentage” for a combined heat and power station is the percentage stated as the efficiency percentage for the station in a certificate in force in respect of the station under paragraph 148 (certificate given by Secretary of State that station is fully or partly exempt).
- (5) Paragraph 149 confers power to make provision by regulations for determining the efficiency percentage to be stated in a certificate under paragraph 148.

#### Textual Amendments

- F8** Words in Sch. 6 para. 15(1)(a) substituted (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, s. 105(6)
- F9** Words in Sch. 6 para. 15(2)(b) repealed (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, ss. 105(7), 110, Sch. 33 Pt. 3(3) Note

*Exemption: supplies (other than self-supplies) of electricity  
from partly exempt combined heat and power stations*

- 16 (1) This paragraph applies to a supply that—
- (a) is a supply made from a partly exempt combined heat and power station of electricity produced in the station, and
  - (b) is not a supply that is deemed to be made under paragraph 23(3).
- (2) The supply is exempt from the levy if the quantity of electricity supplied by the supply is not such as causes the exceeding of any specified limit that, by virtue of regulations made by the Treasury, applies in relation to the station for any specified period.
- (3) In this paragraph “specified” means prescribed by, or determined in accordance with, regulations made by the Treasury.

*Exemption: self-supplies by electricity producers*

- 17 (1) This paragraph applies to a supply of electricity that is deemed to be made under paragraph 23(3) by a person (“the producer”) to himself.
- (2) If the producer is an auto-generator, the supply is exempt from the levy unless—
- (a) it is a supply from a partly-exempt combined heat and power station of electricity produced in the station, and



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- (b) the quantity of electricity supplied by the supply is such as causes the exceeding of any such limit as is mentioned in paragraph 16(2) that applies in relation to the station.
- (3) If the producer is not an auto-generator, the supply is exempt from the levy if it is a supply made from a fully exempt combined heat and power station of electricity produced in the station.
- (4) If the producer is not an auto-generator, the supply is exempt from the levy if—
  - (a) it is a supply from a partly-exempt combined heat and power station of electricity produced in the station, and
  - (b) the quantity of electricity supplied by the supply is not such as causes the exceeding of any such limit as is mentioned in paragraph 16(2) that applies in relation to the station.

*Exemption: supply not used as fuel*

- 18
- (1) A supply of a taxable commodity is exempt from the levy if the person to whom the supply is made intends to cause the commodity to be used otherwise than as fuel.
  - (2) The Treasury may by regulations specify, in relation to any commodity, uses of that commodity that, for the purposes of sub-paragraph (1), are to be taken as being, or as not being, uses of that commodity as fuel.
  - (3) The uses of a commodity that may be specified under sub-paragraph (2) as being uses of that commodity as, or otherwise than as, fuel include uses (“mixed uses”) of the commodity that involve it being used partly as fuel and partly not; but the Treasury must have regard to the object of securing that a mixed use is not specified as being a use of the commodity otherwise than as fuel if it involves the use of the commodity otherwise than as fuel in a way that is merely incidental to its use as fuel.

*Exemption: electricity from renewable sources*

- 19
- (1) A supply of electricity is exempt from the levy if—
    - (a) the supply is not one that is deemed to be made under paragraph 23(3),
    - (b) the supply is made under a contract that contains a renewable source declaration given by the supplier,
    - (c) prescribed conditions are fulfilled, and
    - (d) 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 contract, has in a written notice given to the Commissioners agreed that he will fulfil those conditions so far as they may apply to him.
  - (2) In this paragraph “renewable source declaration” means a declaration that, in each averaging period, the amount of electricity supplied by exempt renewable supplies made by the supplier in the period will not exceed the difference between—
    - (a) the total amount of renewable source electricity that during that period is either acquired or generated by the supplier, and
    - (b) so much of that total amount as is allocated by the supplier otherwise than to exempt renewable supplies made by him in the period.

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In this sub-paragraph “averaging period” has the same meaning as in paragraph 20 and “exempt renewable supplies” means supplies made on the basis that they are exempt under this paragraph.

(3) For the purposes of this paragraph and paragraph 20, electricity is “renewable source electricity” if—

- (a) it is generated in a prescribed manner, and
- (b) prescribed conditions are fulfilled.

A manner of generating electricity may be prescribed by reference to the means by which the electricity is generated or the materials from which it is generated (or both).

(4) In prescribing a manner of generating electricity under sub-paragraph (3), the Commissioners must have regard to the object of securing that exemption under this paragraph is only available for supplies of electricity that has a renewable source.

(5) The conditions that may be prescribed under sub-paragraph (1)(c) include, in particular, conditions in connection with—

- (a) the giving of effect to renewable source declarations;
- (b) the supply of information;
- (c) the inspection of records and, for that purpose, the production of records in legible form and entry into premises;
- (d) monitoring by the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, of the application of provisions of, or made under, this paragraph;
- (e) the doing of things to or by a person authorised by the Authority or the Director General (as well as to or by the Authority or the Director General);
- (f) things being done at times or in ways specified by the Authority, the Director General or such an authorised person.

(6) A condition prescribed under sub-paragraph (1)(c) may be one that is required to be fulfilled throughout a period, including a period ending after the time when a supply whose exemption turns on the fulfilment of the condition is treated as being made.

(7) The conditions that may be prescribed under sub-paragraph (3)(b) include, in particular, conditions in connection with—

- (a) the generation of the electricity;
- (b) the materials from which the electricity is generated;
- (c) any of the matters mentioned in paragraphs (b) to (f) of sub-paragraph (5).

(8) Each of—

- (a) the Gas and Electricity Markets Authority, and
- (b) the Director General of Electricity Supply for Northern Ireland,

shall supply the Commissioners with such information (whether or not obtained under this paragraph), and otherwise give the Commissioners such co-operation, as the Commissioners may require in connection with the application (whether generally or in relation to any particular case) of any relevant provisions.

(9) In sub-paragraph (8) “relevant provisions” means provisions of or made under—

- (a) this paragraph or paragraph 20, or
- (b) paragraph 23(3) so far as relating to electricity, or paragraph 23(4).

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(10) None of—

- (a) section 57(1) of the <sup>M6</sup>Electricity Act 1989,
  - (b) section 42(1) of the <sup>M7</sup>Gas Act 1986, and
  - (c) Article 61(1) of the <sup>M8</sup>Electricity (Northern Ireland) Order 1992,
- (provisions restricting disclosure of information) applies to any disclosure of information made in pursuance of sub-paragraph (8).

#### Marginal Citations

- M6** 1989 c. 29.
- M7** 1986 c. 44.
- M8** S.I. 1992/231 (N.I. 1).

#### *Exemption under paragraph 19: averaging periods*

- 20 (1) This paragraph applies where a person (“the supplier”) makes supplies of electricity on the basis that they are exempt under paragraph 19 (“exempt renewable supplies”).
- (2) The rules about balancing and averaging periods are—
- (a) a balancing period is a period of 3 months;
  - (b) when a balancing period ends, a new one begins;
  - (c) the first balancing period and the first averaging period begin at the same time;
  - (d) unless the supplier specifies an earlier time, that time is the time when he is treated as making the first of the exempt renewable supplies;
  - (e) when an averaging period ends, a new one begins;
  - (f) an averaging period ends once it has run for 2 years (but may end sooner under paragraph (g) or sub-paragraph (4)(a) or (5)(a));
  - (g) if the supplier stops making exempt renewable supplies, the end of the balancing period in which he makes the last exempt renewable supply is also the end of the averaging period in which that balancing period falls.
- (3) At the end of each balancing period calculate—
- (a) the total of—
    - (i) the quantity of renewable source electricity that the supplier acquired or generated in that period, and
    - (ii) any balancing credit carried forward to that balancing period; and
  - (b) the total of—
    - (i) the quantity of electricity supplied by exempt renewable supplies made by him in that period, and
    - (ii) any balancing debit carried forward to that balancing period.
- (4) If the total mentioned in sub-paragraph (3)(a) exceeds that mentioned in sub-paragraph (3)(b)—
- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and

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- (b) a balancing credit equal to the difference between the two totals is carried forward to the next balancing period.
- (5) If the totals mentioned in paragraphs (a) and (b) of sub-paragraph (3) are the same—
  - (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
  - (b) no balancing credit or debit is carried forward to the next balancing period.
- (6) Sub-paragraphs (7) and (8) apply if the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a).
- (7) Where the end of the balancing period is by virtue of sub-paragraph (2)(c) (averaging period ends after 2 years) the end of an averaging period, the supplier is liable to account to the Commissioners for an amount equal to the amount that would be payable by way of levy on a taxable supply that—
  - (a) is made at the end of the balancing period,
  - (b) is a supply of a quantity of electricity equal to the difference between the two totals, and
  - (c) is treated as a reduced-rate supply to the extent (if any) that the exempt renewable supplies made by the supplier in the averaging period would have been reduced-rate supplies if they had not been made on the basis that they were exempt.

For the purposes of this Schedule, the amount for which the supplier is liable to account shall be treated as an amount of levy for which he is liable to account for an accounting period ending at the end of the balancing period.

- (8) Where sub-paragraph (7) does not apply, a balancing debit equal to the difference between the two totals is carried forward to the next balancing period.

VALID FROM 24/07/2002

*Exemption: electricity produced in combined heat and power stations*

- [F1020A] (1) A supply of electricity is exempt from the levy chargeable under paragraph 5(1) if—
- (a) the supply is not one that is deemed to be made under paragraph 23(3),
  - (b) the supply is made under a contract that contains a CHP declaration given by the supplier,
  - (c) prescribed conditions are fulfilled, and
  - (d) the supplier, and each other person (if any) who is a generator of any CHP electricity allocated by the supplier to supplies under the contract, has in a written notice given to the Commissioners agreed that he will fulfil those conditions so far as they may apply to him.
- (2) Sub-paragraph (1) does not apply in relation to a supply to a person of electricity produced in a wholly or partly exempt combined heat and power station where the supply is made to that person from the station.
- (3) In this paragraph “CHP declaration” means a declaration that, in each averaging period, the amount of electricity supplied by exempt CHP supplies made by the supplier in the period will not exceed the difference between—

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- (a) the total amount of CHP electricity that during that period is either acquired or generated by the supplier, and
- (b) so much of that total amount as is allocated by the supplier otherwise than to exempt CHP supplies made by him in the period.

In this sub-paragraph “averaging period” has the same meaning as in paragraph 20B; and “exempt CHP supplies” means supplies made on the basis that they are exempt under this paragraph.

- (4) For the purposes of this paragraph and paragraph 20B, electricity is “CHP electricity” if—
  - (a) the electricity was—
    - (i) produced in a fully exempt combined heat and power station, or
    - (ii) produced in a partly exempt combined heat and power station and originally supplied from the station without causing the limit referred to in paragraph 16(2) to be exceeded,
  - (b) the electricity is not renewable source electricity (within the meaning of paragraph 19), and
  - (c) prescribed conditions are fulfilled.
- (5) The conditions that may be prescribed under sub-paragraph (1)(c) include, in particular, conditions in connection with—
  - (a) the giving of effect to CHP declarations;
  - (b) the supply of information;
  - (c) the inspection of records and, for that purpose, the production of records in legible form and entry into premises;
  - (d) monitoring by the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, of the application of provisions of, or made under, this paragraph;
  - (e) the doing of things to or by a person authorised by the Authority or the Director General (as well as the doing of things to or by the Authority or the Director General);
  - (f) things being done at times or in ways specified by the Authority, the Director General or such an authorised person.
- (6) A condition prescribed under sub-paragraph (1)(c) may be one that is required to be fulfilled throughout a period, including a period ending after the time when a supply whose exemption turns on the fulfilment of the condition is treated as being made.
- (7) The conditions that may be prescribed under sub-paragraph (4)(c) include in particular conditions in connection with any of the matters mentioned in paragraphs (b) to (f) of sub-paragraph (5).
- (8) Each of—
  - (a) the Gas and Electricity Markets Authority, and
  - (b) the Director General of Electricity Supply for Northern Ireland,shall supply the Commissioners with such information (whether or not obtained under this paragraph), and otherwise give the Commissioners such co-operation, as the Commissioners may require in connection with the application of this paragraph (whether generally or in relation to any particular case).

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(9) Paragraph 19(10) (disclosure of information) applies in relation to sub-paragraph (8) above as it applies in relation to paragraph 19(8).]

#### Textual Amendments

**F10** Sch. 6 para. 20A and cross-heading inserted (24.7.2002 with effect as mentioned in s. 123(2) of the amending Act) by 2002 c. 23, s. 123; S.I. 2003/603, art. 2

VALID FROM 24/07/2002

#### *Exemption under paragraph 20A: averaging periods*

[<sup>F11</sup>20B(1) This paragraph applies where a person (“the supplier”) makes supplies of electricity on the basis that they are exempt under paragraph 20A (“exempt CHP supplies”).

- (2) The rules about balancing and averaging periods are—
- (a) a balancing period is a period of three months;
  - (b) when a balancing period ends, a new one begins;
  - (c) the first balancing period and the first averaging period begin at the same time;
  - (d) unless the supplier specifies an earlier time, that time is the time when he is treated as making the first of the exempt CHP supplies;
  - (e) when an averaging period ends, a new one begins;
  - (f) an averaging period ends once it has run for two years (but may end sooner under paragraph (g) or sub-paragraph (4)(a) or (5)(a));
  - (g) if the supplier stops making exempt CHP supplies, the end of the balancing period in which he makes the last exempt CHP supply is also the end of the averaging period in which the balancing period falls.
- (3) At the end of each balancing period calculate—
- (a) the total of—
    - (i) the quantity of CHP electricity that the supplier acquired or generated in that period, and
    - (ii) any balancing credit carried forward to that balancing period; and
  - (b) the total of—
    - (i) the quantity of electricity supplied by exempt CHP supplies made by him in that period, and
    - (ii) any balancing debit carried forward to that balancing period.
- (4) If the total mentioned in sub-paragraph (3)(a) exceeds that mentioned in sub-paragraph (3)(b)—
- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
  - (b) a balancing credit equal to the difference between the two totals is carried forward to the next balancing period.
- (5) If the totals mentioned in paragraphs (a) and (b) of sub-paragraph (3) are the same—

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- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
  - (b) no balancing credit or debit is carried forward to the next balancing period.
- (6) Sub-paragraphs (7) and (8) apply if the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a).
- (7) Where the end of the balancing period is by virtue of sub-paragraph (2)(g) the end of an averaging period, the supplier is liable to account to the Commissioners for an amount equal to the amount that would be payable by way of levy on a taxable supply that—
- (a) is made at the end of the balancing period, and
  - (b) is a supply of a quantity of electricity equal to the difference between the two totals.
- For the purposes of this Schedule, the amount for which the supplier is liable to account shall be treated as an amount of levy for which he is liable to account for an accounting period ending at the end of the balancing period.
- (8) Where sub-paragraph (7) does not apply, a balancing debit equal to the difference between the two totals is carried forward to the next balancing period.]

#### Textual Amendments

**F11** Sch. 6 para. 20B and cross-heading inserted (24.7.2002 with effect as mentioned in s. 123(2) of the amending Act) by 2002 c. 23, s. 123; S.I. 2003/603, art. 2

#### *Regulations to avoid double charges to levy*

- 21 (1) The Commissioners may by regulations make provision for avoiding, counteracting or mitigating double charges to levy.
- (2) For the purposes of this paragraph there is a double charge to levy where—
- (a) a supply of a taxable commodity (“the produced commodity”) is a taxable supply, and
  - (b) a taxable commodity used directly or indirectly in producing the produced commodity has been the subject of a taxable supply.
- (3) Regulations under this paragraph may, in particular, make provision for a supply of a taxable commodity to be wholly or to any extent—
- (a) exempt from the levy, or
  - (b) deemed not a supply of the commodity.
- (4) The provision mentioned in sub-paragraph (3) includes provision for exceptions to any of sub-paragraphs (1) to (3) of paragraph 23 or paragraph 24(3).
- (5) The powers conferred by this paragraph are in addition to the powers to make provision by tax credit regulations in relation to any such case as is mentioned in paragraph 62(1)(g).

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*Regulations giving effect to exemptions*

- 22 (1) The Commissioners may by regulations make provision for giving effect to the exclusions and exemptions provided for by paragraphs 8 to 21.
- (2) Regulations under this paragraph may, in particular, include provision for—
- (a) determining the extent to which a supply of a taxable commodity is, or is to be treated as being, a taxable supply;
  - (b) authorising a person making supplies of a taxable commodity to another person to treat the supplies to that other person as being taxable supplies only to an extent certified by the Commissioners.

*Deemed supply: use of commodities by utilities and producers*

- 23 (1) Where an electricity utility—
- (a) has electricity available to it, and
  - (b) as regards a quantity of the electricity, makes no supply of that quantity to another person but causes it to be consumed in the United Kingdom,
- the utility is for the purposes of this Schedule deemed to make a supply to itself of that quantity of the electricity.
- (2) Where a gas utility—
- (a) holds gas in a gaseous state, and
  - (b) as regards a quantity of the gas, makes no supply of that quantity to another person but causes it to be burned in the United Kingdom,
- the utility is for the purposes of this Schedule deemed to make a supply to itself of that quantity of the gas.
- (3) Where—
- (a) a person has produced a taxable commodity,
  - (b) the commodity is either—
    - (i) a taxable commodity other than electricity, or
    - (ii) electricity that has been produced from taxable commodities, and
  - (c) as regards a quantity of the commodity, the person makes no supply of that quantity to another person but causes it to be burned (or, in the case of electricity, consumed) in the United Kingdom,
- the person is for the purposes of this Schedule deemed to make a supply to himself of that quantity of the commodity.
- (4) The Commissioners may by regulations make provision for electricity to be treated for the purposes of sub-paragraph (3)(b)(ii)—
- (a) as produced from taxable commodities unless prescribed conditions are fulfilled, or
  - (b) as produced otherwise than from taxable commodities only where prescribed conditions are fulfilled.
- (5) The conditions that may be prescribed under sub-paragraph (4) include, in particular, conditions in connection with the materials from which the electricity is produced.

*Deemed supply: change of circumstances or intentions*

- 24 (1) This paragraph applies where—



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- (a) a supply of a taxable commodity has been made to a person on or after 1st April 2001,
  - (b) the supply was not a taxable supply, and
  - (c) 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 have been a taxable supply.
- (2) This paragraph does not apply where the supply was not a taxable supply by reason of being exempt from the levy under paragraph 19 (exemption for supply of electricity from renewable sources, but see paragraph 20).
- (3) The person to whom the supply was made is for the purposes of this Schedule deemed to make a taxable supply of the commodity to himself.
- (4) Where—
- (a) a supply of a taxable commodity was not a taxable supply by virtue of being supplied for use in premises of a description mentioned in any of paragraphs (a) to (f) of paragraph 9(2), and
  - (b) those premises cease to be premises of any of those descriptions,
- sub-paragraph (3) only applies to so much (if any) of the commodity supplied as was not used in the premises before they ceased to be premises of any of those descriptions.
- (5) The Commissioners may by regulations make provision specifying descriptions of occurrences and non-occurrences that are to be taken as being, or as not being, changes of circumstances or intentions for the purposes of sub-paragraph (1)(c).

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