

**EXPLANATORY MEMORANDUM TO THE
CLIMATE CHANGE LEVY (FUEL USE AND RECYCLING PROCESSES)
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 prescribing those recycling processes for which supplies of commodities as fuel are nonetheless exempt from climate change levy (CCL).

- 2.2 The instrument also takes the opportunity to consolidate (and expand) the existing provisions specifying those activities for which supplies of commodities are exempt from CCL because they are used otherwise than as fuel.

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 18(1) has always exempted supplies of commodities used otherwise than as fuel.

- 4.2 The case of commodities used both as fuel and otherwise ('mixed use') was the subject of a State aid investigation by the European Commission. The Commission considered that this exemption was within the logic and nature of CCL.

- 4.3 It also considered and raised no objection to the Government's proposal to extend the exemption to less environmentally damaging recycling processes that compete with primary processes benefiting from the non-fuel (and 'mixed use') exemption.

- 4.4 Full details are in the Commission Decision of 3 April 2002 on the dual-use exemption which the United Kingdom is planning to implement under the Climate Change Levy and the extended exemption for certain competing processes (OJ No L 229, 27.8.02, p 15).

Recycling processes: regulation 4

4.5 Regulation 4 and Schedule 2 represent first use of the power in the Finance Act 2000 Schedule 6 paragraph 18A to prescribe the relevant metallurgical recycling processes and so replace an extra-statutory concession introduced in July 2002.

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

4.6 The exemption is only capable of applying in very limited circumstances. To be prescribed, a recycling process must:

- (a) be less energy intensive than the primary process with which it competes,
- (b) be liable to a higher CCL charge per tonne of output than the primary process, and
- (c) produce the same kind of output as the primary process.

Use otherwise than as fuel: regulation 3

4.7 The Finance Act 2000 Schedule 6 paragraphs 18(2) and 18(3) envisage that Regulations may specify non-fuel and fuel uses.

4.8 Regulation 3 and Schedule 1 take the opportunity to consolidate and rationalise the existing lists.

4.9 They also specify a new non-fuel use as Schedule 1 Part B Item 32: natural gas as feedstock in a gas generator supplying a reducing atmosphere for the treatment or annealing of metal products.

EU legislation

4.10 The instrument deals with matters to which Council Directive 2003/96/EC does not apply (taxation of energy products and electricity) (OJ No L 283, 31.10.03, p 51).

4.11 Article 2.4(b) provides that the Directive shall not apply to energy products used for purposes other than as motor fuels or heating fuels, to dual use of energy products (those used both as heating fuel and for purposes other than as motor fuel and heating fuel, and use for chemical reduction and in electrolytic and metallurgical processes), and to electricity used principally for chemical reduction and in electrolytic and metallurgical processes.

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 (Fuel Use and Recycling Processes) 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 There are a number of exemptions from CCL, and these include processes that do not use taxable commodities as fuel (or that use them as fuel in competing recycling processes).

7.3 The size and nature of the new issues addressed by the instrument are negligible, and technical experts have confirmed that the additional processes should be exempt from CCL.

7.4 The level of public interest will be very low in that the additional processes are restricted to three metallurgical trade sectors.

7.5 The changes are not politically important and the environment is not affected because these processes have been carried out for some time anyway. The exemptions benefit the trade sectors concerned.

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 will be absorbed into existing practices. The total monetary cost is much less than £5 million per year.

9. Contact

Eddie Beasley at HM Customs and Excise Tel: 0161 827 0913 or e-mail: eddie.beasley@hmce.gsi.gov.uk can answer any queries regarding the instrument on behalf of the Treasury.