

2005 No. 1716

CLIMATE CHANGE LEVY

**The Climate Change Levy (Miscellaneous Amendments)
Regulations 2005**

<i>Made</i> - - - -	<i>30th June 2005</i>
<i>Laid before the House of Commons</i>	<i>1st July 2005</i>
<i>Coming into force</i> - -	<i>22nd July 2005</i>

The Commissioners for Her Majesty's Revenue and Customs(a), in exercise of the powers conferred by section 30 of and Schedule 6 paragraphs 20A(1)(c), 20A(4)(c), 20A(5), 20A(6), 20A(7), 22(1), 22(2), 39(1)(c), 41(1), 41(2), 41(2B), 43(4), 53(4), 59(1), 59(2), 60(1)(a), 62(1), 62(2), 62(3), 114(1), 114(2), 125(1), 125(2), 125(3), 146(2), 146(4), 146(7), 147, 149A(1), 149A(2), 149A(3) and 149A(4) to the Finance Act 2000(b), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Climate Change Levy (Miscellaneous Amendments) Regulations 2005 and come into force on 22nd July 2005.

(2) Regulations 2 to 5, and 7, amend the Climate Change Levy (General) Regulations 2001(c), subject to the transitional provisions in regulation 6.

(3) Regulation 8 elucidates the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001(d).

Excluded, exempt and half-rate supplies

2. In regulation 2(1) of the Climate Change Levy (General) Regulations 2001 in the meaning given for “registrable person”, insert after “Act”—

“(including, but for regulations 8 and 9 only (records), a person whom the Commissioners exempt from that requirement under Schedule 1 paragraph 5(9))”.

3. In regulation 5(1)(b) of those Regulations, for “5(6)(b)(ii)” substitute “5(9G)”.

4. In regulation 34(1)(a) of those Regulations, for “or 18 (non fuel use)” substitute “, 18 (non fuel use) or 18A (recycling processes)”.

(a) The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(b) 2000 c. 17; relevant amendments made by the Finance Act 2002 (c. 23) section 123 (having effect as of 1st April 2003 under S.I. 2003/603 (C.31)) and section 124, and by the Finance Act 2003 (c. 14) section 190 (having effect as of 22nd July 2005 under S.I. 2005/1713 (C.72)) and section 192.

(c) S.I. 2001/838; relevant amending instrument is S.I. 2003/604.

(d) S.I. 2001/7.

5. In Schedule 1 to those Regulations—

- (a) in the index at the start—
 - (i) for “Paragraph 5 Compulsory updates and corrections to CCL due.” substitute “Paragraph 5 Compulsory updates, correction and payment of CCL due, exemption from CCL registration.”;
 - (ii) for “Paragraphs 6-11 Tax credit for recipient.” substitute “Paragraphs 6-11 Tax credit for recipient and reconciliation for input fuel to combined heat and power stations.”;
- (b) in the Notes to Schedule 1 paragraph 2—
 - (i) in the description of quantity “Q”, for point (c) substitute—

“(c) Q does not include any of that quantity that falls within the exemption from CCL provided for by or under paragraph 16, 19 or 20A – electricity supplied exempt directly or indirectly from combined heat and power stations, or electricity supplied from renewable source.”;
 - (ii) in the description of quantity “M”, insert after “(f)”—

“(fa) paragraph 18A—recycling processes;”;
- (c) change paragraph 5’s heading to “**Compulsory updates, corrections and payment of CCL due, exemption from CCL registration**”;
- (d) to paragraph 5(3), add—

“This sub-paragraph is subject to paragraph 16 (5 year renewal limit).”;
- (e) for paragraphs 5(6) to 5(9), substitute—

“(6) For the purposes of sub-paragraph (5), the benefit and extent of any relevant tax credit must be allocated to supplies in reverse chronological order (see paragraphs 6 to 10, tax credits for recipients, etc).

This means that supplies treated as taking place later have priority over supplies treated as taking place earlier.

(7) Sub-paragraphs (8) to (9F) apply if (a) the supplier certificate was incorrect because the CCL relief percentage was too high, and (b) paragraphs 24(1B) and 24(3) of the Act (Deemed supply: change of circumstances etc) apply accordingly in relation to supplies made on the basis of that certificate in that review period.

(8) For the purposes of sub-paragraph (7), the extent to which the supplier certificate was incorrect must be allocated to supplies in reverse chronological order (about which see sub-paragraph (6)).

Any supplies then deemed to be made under paragraph 24(3) of the Act are treated as taking place at the time of the review in question under sub-paragraph (1).

(9) But the Commissioners may exempt the recipient from any consequential requirement to be registered if the following conditions and requirements are satisfied (for registration, see paragraphs 24(3), 40 and 53(1) of the Act).

(9A) First, the recipient must not otherwise be a registrable person (for registrable, see regulation 2(1)).

(9B) Secondly, the recipient must deliver a relevant written application to the Commissioners within 30 days starting from the day after compliance with sub-paragraph (1).

(9C) That application must include notification of the following—

- (a) the type and quantity of taxable commodity so deemed to be supplied by the recipient under paragraph 24(3) of the Act,
- (b) the amount of CCL payable by the recipient as a result, and
- (c) the number of such payments the recipient anticipates having to make annually.

(9D) Thirdly, the recipient must pay the CCL due on those supplies to the Commissioners no later than the 30th day after the one on which the approval decision is delivered.

(9E) If the Commissioners do not exempt the recipient but sub-paragraphs (9A), (9B) and (9C) are satisfied, the 30 days for notifying registrability starts on the day the refusal decision is delivered (for notifying registrability, see regulations 2(5) and 20(a) of the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001(a)).

(9F) Exemption from registration under sub-paragraph (9) applies only in relation to the consequential requirement mentioned there in relation to sub-paragraphs (7) and (8).

Such exemption may be of limited duration and revoked by the Commissioners at any time.

(9G) This sub-paragraph applies instead of sub-paragraphs (7) to (9F) to the extent that the supplier certificate was incorrect because the CCL relief percentage was too high in relation to half-rate supplies (see paragraph 43(1) of the Act).

The recipient must pay to the Commissioners, no later than the 30th day after the last one for that person's compliance with sub-paragraph (1), the balance of the CCL due for those supplies.

If the recipient is a registrable person, the error may be corrected by the making of an appropriate adjustment under regulation 5(1)(b) (adjustment in CCL return) in relation to an accounting period ending no later than six months after the last day for that person's compliance with sub-paragraph (1).";

- (f) change the heading for regulations 6–11 to “**Tax credit for recipient and reconciliation for input fuel to combined heat and power stations**”;
- (g) omit paragraph 8(1)(a) (tax credit allowed for in subsequent supplier certificate);
- (h) in paragraph 8(1)(b), omit the brackets and words after “accounting period”;
- (i) in paragraph 8(4), omit everything after “in question,” but before “the Commissioners”;
- (j) omit paragraph 8(6);
- (k) in paragraph 9(1), for “unable to make a claim in accordance with paragraph 8(1),” substitute “not registrable or is exempt from registration (see paragraph 5(9)),”;
- (l) omit paragraphs 9(4) and 9(6);
- (m) after paragraph 9, insert—

“**9A.** Paragraphs 5 to 9 apply subject to the modifications in paragraph 9C, but those modifications are only relevant to the extent that the recipient's relief percentage is determined on the basis of a quantity of taxable commodity referable to paragraph 15 of the Act (supplies to combined heat and power stations).

9B.—(1) For the purposes of the following sub-paragraphs, regard a completed calendar year as one for which 31st December is passed and an incomplete calendar year as one for which 31st December is not passed.

(2) The reconciliation day for a completed calendar year is the earlier of—

- (a) the first day of the month in the subsequent calendar year in which regulation 3(2) of the Climate Change Levy (Combined Heat and Power Stations) Exemption Certificate Regulations 2001(b) is met in relation to the station in question (current CHPQA certificate sent to Secretary of State by 30th June);
- (b) the 60th day after any day in the subsequent calendar year on which the station's exemption certificate is revoked pursuant to regulation 4(2) of those Regulations (station ceases to operate, current CHPQA certificate not sent to Secretary of State by 30th June, or relevant written request to Secretary of State).

(a) S.I. 2001/7.
(b) S.I. 2001/486.

The “reconciliation span” relating to this reconciliation day is the completed calendar year.

(3) A reconciliation day for an incompleting calendar year is the 60th day after any day in that incompleting calendar year on which the station’s exemption certificate is revoked pursuant to regulation 4(2) of those Regulations.

The “reconciliation span” relating to any such reconciliation day spans 1st January in that calendar year to the day before that reconciliation day, inclusive.

9C.—(1) The recipient must review the correctness of the supplier certificate no later than a reconciliation day in paragraph 9B.

This review is only in relation to that part of the recipient’s relief percentage that is determined on the basis mentioned in paragraph 9A (taxable commodities supplied to combined heat and power stations).

(2) That correctness must be reviewed in relation to the efficiency percentage determined for the relevant reconciliation span (for determination of efficiency percentage, see regulations 3(2) and 6(2) of the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005(a)).

In the case of a reconciliation span for an incompleting calendar year, treat the actual efficiency percentage as one determined for the 12 month period preceding the relevant reconciliation day and as if that period was an Annual Operation (for Annual Operation, see regulation 51B(6)), but as zero for any time the exemption certificate stands revoked.

(3) The review must properly take into account—

- (a) each quantity of taxable commodity supplied on the basis of the supplier certificate or certificates in question and not previously the subject of a review under this paragraph, and
- (b) the actual efficiency percentage for the station in question at the time or times when that taxable commodity is supplied.

(4) Sub-paragraph (5) or (6) applies if the review demonstrates that the supplier certificate was incorrect as respects the taxable commodity referable to paragraph 15 of the Act (supplies to combined heat and power stations).

(5) If the CCL relief percentage applied was too low, the recipient may act in accordance with paragraphs 6 to 9 (recipient’s tax credit for supply incorrectly made on basis of its being a taxable supply) (but only in relation to the taxable commodity referable to paragraph 15 of the Act – supplies to combined heat and power stations).

After 21st July 2005, and irrespective of when the supplies in question were made or other relevant events occurred, paragraph 5(5) does not apply where this paragraph applies.

(6) If the CCL relief percentage applied was too high, paragraphs 5(7) to 5(9G) apply accordingly (deemed taxable self supplies, exemption from registration, payment of CCL due, etc).

(7) This paragraph only applies to supplies made after 31st December 2004, but not to those supplies in relation to which corresponding arrangements have been initiated or made before 22nd July 2005.

Corresponding arrangements are only—

- (a) claims by the recipient for tax credits or similar repayments, or
- (b) steps taken by the recipient to correct the position following a review demonstrating that a CCL relief percentage was too high (delivery of updated supplier certificate such that error corrected in one year, adjustment in CCL return, payment to Commissioners – see paragraph 5(6) as in force before 22nd July 2005).”;
- (n) in paragraph 12(1), for everything after “anticipated” substitute “events.”;

(a) S.I. 2005/1714.

- (o) omit paragraph 12(2);
- (p) after paragraph 13(1), insert—

“(1A) Where a supplier changes under paragraph (1) without the recipient’s active participation and the supplier certificate and supporting analysis document are transferred to the later supplier—

- (a) continuity is preserved for all CCL purposes in relation to the change, and
- (b) the certificate and document are deemed to have been originally given by the recipient to that later supplier.

If there is no such transfer, the supplier certificate and supporting analysis document shall not have effect in relation to supplies from the later supplier.”;

- (q) in paragraph 13(2), for “In these circumstances,” substitute “In the case of sub-paragraph (1) or if continuity is not preserved in the case of sub-paragraph (1A),”;
- (r) after paragraph 15, insert—

“16. A supplier certificate ceases to be valid for the purposes of regulation 34, 35 or 36 on the 5th anniversary of its implementation date (about which, see regulation 37(6)).”.

6. Arrangements initiated or made before 22nd July 2005 on the basis of paragraph 5(5) or 5(6) of Schedule 1 to those Regulations as then in force remain subject to the provisions applicable when they were initiated or made (tax credit claims and corrections to over-estimated relief).

Electricity from combined heat and power stations

7.—(1) Renumber regulation 51A of those Regulations as regulation 51A(1), for “Schedule 2” in its introductory words substitute “Schedules 1 and 2”, and insert after the meaning for “CHP declaration contract”—

““CHPQA” refers to the Combined Heat and Power Quality Assurance Standard, Issue 1, November 2000 originally published by the Department for the Environment, Transport and the Regions (including the later of version Final 1.0 or 2.0 of CHPQA Guidance Notes(a) 0 to 4 (including 2(S), 3(S) and 4(S)), 10 to 28 and 30);”.

(2) Insert as regulation 51A(2) of those Regulations—

“(2) In the case of electricity produced in a given station after 21st July 2005, this Part and Schedule 2 (and the related penalties provided for by regulation 60(1)(ha) and regulation 60(1)(hb)) only apply if at least some of that electricity is supplied otherwise than from that station (indirect supplies, see paragraph 20A(2) of the Act).”.

(3) For regulation 51B(1) of those Regulations, substitute—

“(1) The relevant Authority must certify QPO electricity in accordance with this Part and Schedule 2.”.

(4) In regulation 51B(5) of those Regulations, for the acronym and words after “metering requirements of” substitute “the CHPQA”.

(5) For regulation 51B(6) of those Regulations, substitute—

“(6) The relevant Authority must only certify for the purposes of paragraphs (1) and (2) on the basis that—

- (a) each quantity of electricity produced by an individual station is referable to the Annual Operation in which it is produced, and
- (b) every such quantity in a given Annual Operation comprises the same relative proportions of QPO electricity and non-QPO electricity.

(a) CHPQA Guidance Notes are explained in Section 5.1 of the Standard.

This requirement is subject to the other provisions of this Part and Schedule 2 (non-certification, restricting validity to indirect supplies, reconciliation).

“Annual Operation” has the same meaning as in regulations 2(3), 3(2), 4 and 6(1) of the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005(a) (namely, 1st January to 31st December).”

(6) To regulation 51B(8) of those Regulations, add—

“The relevant Authority must both certify QPO electricity in accordance with paragraphs (1), (2), (3), (6) and (7) and issue the relevant CHP LEC no later than the end of the third month following the end of the month in which the electricity is produced.

Whilst the relative proportions mentioned in paragraph (6)(b) are unknown, the relevant Authority must use a reasonable estimate of what those relative proportions will be.

If the relevant Authority must investigate further whether the electricity in question is “QPO electricity”, it must certify the QPO electricity and issue the relevant CHP LEC no later than the end of the month following the month in which that investigation ought reasonably to have been concluded.”

(7) Omit regulation 51C(4)(h) of those Regulations (Authority not otherwise satisfied that electricity should be certified).

(8) In Schedule 2 paragraph 3(4) to those Regulations, for “120th day following when the supply is treated as taking place” substitute “end of the second month following the one in which the CHP LEC is issued”.

(9) For Schedule 2 paragraph 8(1) to those Regulations, substitute—

“(1) This paragraph only applies whilst the relevant Authority has information on the basis of which it reasonably believes that the person mentioned in paragraph 2 is not fully complying with the CHP outputs record requirements in paragraphs 2 to 7.”

(10) In Schedule 2 paragraphs 8(2) and 8(3) to those Regulations, for “may” substitute “must”.

(11) In Schedule 2 to those Regulations, after paragraph 11(7) insert—

“(8) In the case of electricity and a station to which this paragraph applied before 22nd July 2005 but not after 21st July 2005 (see regulation 51A(2)), the relevant Authority must treat 22nd July 2005 as a reconciliation day for an incompleting calendar year running from 1st January to 21st July 2005 inclusive (the “reconciliation span”).

The determination in sub-paragraph (1) must be made on the basis that a partly exempt station’s annual limit for that incompleting calendar year is the former limit multiplied by the fraction with a numerator of 202 and a denominator of 365.

For these purposes, the “former limit” is the one in force on 1st January 2005 under regulation 5(2) of the Climate Change Levy (Combined Heat and Power Stations) Prescribed Conditions and Efficiency Percentages Regulations 2001(b).”

Tax representatives

8. In regulation 14(4) of the Climate Change Levy (Registration and Miscellaneous Provisions) Regulations 2001—

(a) in sub-paragraph (a) after “specify”, insert “(for such residence, see paragraph 156 of the Act)”, and

(b) after sub-paragraph (b), insert—

“In regulations 17(4)(a), 18(1)(e) and 19(5), “eligible” only refers to a person’s being so resident in the United Kingdom.”

(a) S.I. 2005/1714.

(b) S.I. 2001/1140, amended by S.I. 2003/861 and revoked as of 22nd July 2005 by S.I. 2005/1714.

30th June 2005

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Amendments

These Regulations(a) amend the existing rules about administering exemptions and other reliefs from climate change levy (CCL)(b).

Regulations 5(g) to 5(k) enable consumers who under-estimate their entitlement to exemptions and other reliefs for a given period to enjoy the benefit of their tax credit earlier. This is because the tax credit no longer has to be assimilated into the consumer's estimate for the exemptions and other reliefs in the subsequent period.

A business supplied with commodities on a non-taxable basis later determined to be taxable must register for CCL to pay the amount due(c). Regulation 5(e) makes amendments that enable HM Revenue & Customs to exempt such a business from registration on the basis of a suitable written application and payment of the CCL due(d). Regulation 2 provides for existing record-keeping requirements to apply to such a business.

The precise amount of exemption for the fuel burned by a combined heat and power station in producing electricity may not be known until the end of a calendar year(e) although the supplier provisionally makes the exemption available during the year(f). Regulation 5(m) makes amendments that require the station to reconcile separately the actual exemption with the amount made available. The reconciliation is linked to significant days in the station's assessment cycle(g), but otherwise operates under rules parallel to those that apply to businesses generally for other exemptions and reliefs(h).

Certified(i) electricity produced in combined heat and power stations may be supplied exempt from CCL(j). Regulation 7(2) removes the certification requirements for stations that only supply the electricity directly to the user(k). The remainder of regulation 7 makes technical changes to the manner in which certification proceeds(l).

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- (a) Which include a host of consequential amendments not dealt with separately in this explanatory note.
- (b) They build on or modify arrangements put in place at the inception of CCL in April 2001 and therefore do not of themselves implement Article 6 of Council Directive 2003/96/EC (taxation of energy products and electricity) (exemptions or reductions to be given effect directly, by means of differentiated rate, or by refund) (OJ No L 283, 31.10.03, p 54).
- (c) Finance Act 2000 (c. 17) Schedule 6 paragraphs 24(1B) (relevant amendments to paragraph 24 having effect as of 22nd July 2005 under the Finance Act 2003 (c. 14) section 190 and S.I. 2005/1713 (C.72)), 24(3), 40 and 53(1).
- (d) Provision is also made for a business not to be penalised for late registration for reason only that such an application is refused. The existing position is broadly maintained for half-rate supplies to horticultural producers.
- (e) Finance Act 2000 (c. 17) Schedule 6 paragraph 15; amendments to paragraph 15 have effect as of 22nd July 2005 under the Finance Act 2003 (c. 17) section 189(2) and S.I. 2005/1713 (C.72).
- (f) S.I. 2001/838 regulations 34 and 38 and Schedule 1.
- (g) Under the Combined Heat and Power Quality Assurance programme, see the CHPQA Standard, Issue 1 of November 2000 originally published by the Department of the Environment, Transport and the Regions and available from www.chpqa.com and see also S.I. 2005/1714.
- (h) Regulation 6 preserves the existing arrangements for all businesses on a transitional basis for steps initiated or made before 22nd July 2005 to finalise the amount of such exemptions.
- (i) Certification is by the Gas and Electricity Markets Authority or the Director General of Electricity Supply for Northern Ireland, as appropriate. See S.I. 2001/838 regulations 51A and 51B, inserted by S.I. 2003/604.
- (j) Finance Act 2000 (c. 17) Schedule 6 paragraphs 16, 17 and 20A, the latter inserted by section 123 of the Finance Act 2002 (c. 23) and having effect as of 1st April 2003 by virtue of S.I. 2003/603 (C.31). See also S.I. 2001/838 Part IV(A), inserted by S.I. 2003/604.
- (k) This includes own use, see regulation 7(2). Regulation 7(11) transitions such stations out of the certification regime up to and including 21st July 2005.
- (l) Including requiring the certifying authorities to act on the basis of objective requirements.

Regulations 4 and 5(b)(ii) make consequential amendments to assimilate the new CCL exemption for recycling processes(a) within existing administrative arrangements(b).

Elucidation

Regulation 8 only adds words of elucidation(c) to better sign post the basket of provisions relating to eligibility of CCL tax representatives.

Regulatory impact assessment

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or voluntary bodies.

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- (a) About which see the Finance Act 2000 (c. 17) Schedule 6 paragraph 18A, inserted by the Finance Act 2003 (c. 14) section 188, and S.I. 2005/1715.
- (b) Regulation 5(b)(i) takes the opportunity to provide a fuller description of the electricity to be excluded from the denominator of the CCL relief formula in S.I. 2002/838 Schedule 1 paragraph 2.
- (c) To regulation 14(4) of S.I. 2001/7.

£3.00

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E1018 7/2005 151018T 19585

