

**EXPLANATORY MEMORANDUM TO
THE CLIMATE CHANGE AGREEMENTS (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2006**

2006 No.1848

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

2. Description

2.1 The instrument amends the Climate Change Agreements (Energy-intensive Installations) Regulations 2006 (SI 2006/59) to enable additional energy-intensive facilities to be identified in a climate change agreement (CCA). Supplies of electricity, gas and solid fuels to them may then carry only 20% of the climate change levy (CCL) rates.

2.2 The instrument also amends the Table in paragraph 51 of Schedule 6 to the Finance Act 2000 ("Table"), which is necessary to take account of amendments to Schedule 1 to the Pollution Prevention and Control (England and Wales) Regulations 2000 (SI 2000/1973) ("the PPC Regulations") and certain omissions from the Table.

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

None.

4. Legislative background

4.1 The Finance Act 2000 (c.17) Schedule 6 has, since 1 April 2001, charged CCL on supplies of electricity, gas and solid fuels for business use.

4.2 Paragraphs 42 and 44 to 51 of that Schedule enable supplies to an energy-intensive facility to carry only 20% of the CCL rates. The facility must be identified in a CCA with the Secretary of State for the Environment, Food and Rural Affairs. CCAs set targets for improvements in energy efficiency or emissions, and performance is monitored regularly. CCAs therefore assist energy-intensive businesses exposed to international competition, but also oblige them to improve their energy efficiency or reduce their emissions in return for the reduced CCL rates.

4.3 Under paragraphs 50 and 51 of that Schedule, CCA eligibility is built from the idea of Part A installations as defined in Schedule 1 Part 3 to the PPC Regulations. Not all energy intensive premises are covered by that definition which has led to some distortions and inequalities. In 2004, the UK therefore applied to the Commission for state aid approval for new eligibility criteria to allow sectors not covered the PPC Regulations to be able to sign CCAs if they met the qualifying criteria. The Commission approved the UK's application in October 2005.

4.4 The Climate Change Agreements (Energy-intensive Installations) Regulations 2006 (SI 2006/59), which came into force on 19 January 2006, expanded the types of

installation that may form a CCA facility to include the installations described in the Schedule to that instrument (i.e. those for which state aid approval was granted). The Climate Change Agreements (Eligible Facilities) Regulations 2006 (SI 2006/60) prescribed the conditions of eligibility for the new installations in order for them to be eligible to enter into CCAs.

4.5 State aid approval for further sectors was granted on 12 April 2006, and SIs 2006/59 and 60 are therefore being amended to expand CCA eligibility. Regulation 3 of this instrument expands the type of installation that may form a facility taken as being covered by a climate change agreement to include any installation not otherwise covered by paragraph 51 of Schedule 6 to the Finance Act 2000. The conditions of eligibility for such installations to enter into CCAs will be those set out in SI 2006/60 once it is amended by a further instrument, the Climate Change Agreements (Eligible Facilities) (Amendment) Regulations 2006 SI 2006/xxxx, which will be laid by the Department for Environment, Food and Rural Affairs under the negative procedure, following the making of this instrument. The new sectors will not be eligible to enter into CCAs until the amendments to SI 2006/60 have been made.

4.6 The approach adopted in this instrument is designed to avoid the need for further affirmative instruments to be made in the future in the event that further sectors are granted state aid approval to enter into CCAs. In the future, it should be possible to make amendments to SI 2006/60 under the negative procedure in order to introduce any new sectors.

4.7 As stated in paragraph 4.3 above, CCA eligibility was originally built only from Part A installations as defined in Schedule 1 Part 3 to the PPC Regulations. While SIs 2006/59 and 60 expand the sorts of installations that may be eligible, the definitions in the PPC Regulations remain relevant as most installations that may be eligible to be covered by a CCA will still be caught by these definitions. Following close examination by Defra of the Table and the PPC Regulations (which have been amended a number of times), correction of certain omissions and the making of other amendments to the Table at paragraph 51 of Schedule 6 to the Finance Act 2000 (which refers to the PPC Regulations) are now considered necessary. Regulation 2 of this instrument gives effect to these amendments.

4.8 The scheme as a whole takes advantage of the frameworks in Articles 5 and 17 of Council Directive 2003/96/EC (taxation of energy products and electricity) (OJ No L 283, 31.10.03, p 51) (differentiated rates above the minimum levels, and other reductions for energy-intensive businesses).

(The Directive was:

Cleared by the House of Lords – 9 December 2002.

Debated in Standing Committee B, House of Commons – 27 October 1999.

Cleared by the 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 MP, Financial Secretary to the Treasury, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 The imposition of CCL on the energy used by business and the public sector 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 and 2012 by at least 5% below 1990 levels. The European Union and its member States agreed to a burden-sharing agreement of an 8% reduction in greenhouse gas emissions by 2012. As part of this agreement, the United Kingdom has taken on a reduction of 12.5%.

7.2 The first target results for CCL showed that sectors with CCAs, and enjoying 20% of the CCL rates, made real improvements in their energy efficiency or reductions in their emissions. So, as well as removing some of the competitive distortions referred to above, there is a sound environmental rationale for extending the agreements to other energy-intensive sectors exposed to international competition.

7.3 The level of public interest will be mainly restricted to the business sectors for which the new eligibility criteria are relevant, suppliers who will provide them with energy at the reduced CCL rates, and business associations such as the Confederation of British Industry (who argued for, and welcomed, the widening of eligibility).

8. Impact

8.1 A Regulatory Impact Assessment has not been produced for this instrument as it has no impact on the costs of business.

8.2 The impact on the public sector is absorbed within existing practices and there is no overall net cost to the Exchequer.

9. Contact

Phil Wilson at HM Revenue and Customs Tel: 020 7147 0655 or e-mail: philip.wilson@hmrc.gsi.gov.uk can answer any queries regarding the instrument on behalf of the Treasury.