

EXPLANATORY MEMORANDUM TO
THE CLIMATE CHANGE LEVY (COMBINED HEAT AND POWER
STATIONS) (AMENDMENT) REGULATIONS 2013

2013 No. 232

1. This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005 (SI 2005/1714) (“the principal Regulations”) and comes into force on 1 April 2013.

2.2 This instrument makes changes arising from withdrawal from 1 April 2013 of the exemption from climate change levy (CCL) for supplies of electricity generated in a combined heat and power (CHP) station that are made by an electricity utility to an energy consumer (“the CHP indirect supplies exemption”). It re-introduces certain categories of supplies that may be disregarded when calculating the limit on the quantity of electricity that may be produced in, and supplied from, a partly exempt¹ CHP station exempt from CCL for a given Annual Operation, and makes provision to include in that calculation the electrical equivalent of any mechanical output of the station produced otherwise than for electricity generation.

2.3 This instrument also revokes spent transitional provisions that could apply in determining the limit on the quantity of electricity that may be produced in, and supplied from, a partly exempt station exempt from CCL for the calendar year 2005.

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

None.

4. Legislative context

4.1 The primary legislation containing provisions for CCL is contained in Schedule 6 to the Finance Act 2000 (“Schedule 6”). The CHP indirect supplies exemption is contained in paragraph 20A of Schedule 6. This paragraph will be removed from a date to be appointed by Treasury order as a result of changes made in Part 3 of Schedule 32 to Finance Act 2012 (“Part 3”), with a

¹ This term is explained in paragraph 7.3 of this memorandum

number of other consequential changes also being made from this date as a result of Part 3.

4.2 The principal Regulations determine, in relation to the output electricity of a station, the circumstances in which a full CHP exemption certificate will be issued; and where a part exemption certificate is issued, they also set the limit of the electricity that may be supplied exempt from CCL.

4.3 Under paragraph 16(2) of Schedule 6 and regulation 4 of the principal Regulations, a supply of electricity from a partly exempt CHP is currently exempt from CCL if the quantity of electricity supplied does not exceed the specified limit set out in regulations made by the Treasury. This instrument allows any supplies made by a partly exempt CHP to a utility or for domestic use or use by a charity other than in the course or furtherance of business to be disregarded when calculating that limit, but requires the electrical equivalent of any mechanical output of the station produced otherwise than for electricity generation to be included.

5. Territorial extent and application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary, Sajid Javid MP, has made the following statement regarding Human Rights:

In my view the provisions of the Climate Change Levy (Combined Heat and Power Stations) (Amendment) Regulations 2013 are compatible with the Convention rights.

7. Policy background

• *What is being done and why*

7.1 The CCL is an important part of the UK's strategy for meeting the UK's legally binding target under the Kyoto Protocol of a 12.5 per cent reduction in greenhouse gas emissions below 1990 levels over the period 2008 to 2012. To help meet these targets, CCL encourages the efficient use of energy by business and the public sector. Domestic supplies of energy are not subject to the tax.

7.2 The CCL legislation provides for exemptions for environmentally friendly forms of electricity generation, including one to encourage CHP generation. The extent to which electricity qualifies for the exemption depends on the efficiency and environmental performance of a CHP station as assessed under the CHP Quality Assurance (CHPQA) Standard.

7.3 Where a CHP station achieves the Quality Index under the CHPQA Standard it is certified as being fully exempt and all the electricity supplied is

exempt from CCL. Where a CHP station only partly meets that test, it is certified as being partly exempt in recognition of its reduced environmental benefits and only a proportion of the electricity produced (its qualifying limit) can be supplied exempt from CCL. Such stations are known as partly exempt CHP stations.

7.4 At the introduction of CCL in April 2001, CHP-generated electricity was exempt from the levy only where the supply of electricity was made direct by the CHP operator to the end consumer. However, when calculating the limit on the quantity of electricity that may be produced in and supplied from a partly exempt CHP station exempt from the levy, any supplies from the station to a utility or for domestic or non-business charity use could be disregarded. But the calculation had to include the electrical equivalent of any mechanical output of the station produced otherwise than for electricity generation.

7.5 In April 2003, to encourage greater CHP electricity generation, the original exemption for CHP electricity was extended to “indirect supplies”, that is to say supplies made via an electricity utility to an energy consumer. To cater for the fact that all qualifying CHP-generated electricity could be supplied exempt, all qualifying electricity, known as qualifying power output (QPO), has, since 1 April 2003, been subject to the levy exemption certificate (CHP LEC) regime when it is produced. CHP LECs form one part of the evidence of entitlement to exemption. As a consequence of the introduction of CHP LECs it was necessary to require all categories of supply to be taken into account for the purposes of determining the QPO limit of a partly exempt CHP station and so the supply category restrictions for the purposes of reckoning contribution towards QPO were removed.

7.6 In the Budget 2011, the Government announced its intention to withdraw the CHP indirect supplies exemption on 1 April 2013.

7.7 As a result of the ending of this exemption, the QPO produced in a CHP station after 31 March 2013 will no longer be the subject of CHP LECs. Amendments to the Climate Change Levy (General) Regulations 2001 (S.I. 2001/838) have been made by S.I. 2012/3049.

7.8 This instrument re-introduces from 1 April 2013 the provisions that previously applied before the introduction of the CHP LEC system in respect of partly exempt CHP stations.

- ***Consolidation***

7.9 The Government does not intend to consolidate the legislation at this time.

8. Consultation outcome

In line with the Government’s framework for making tax policy a draft of this instrument was published for consultation on 6 December 2011. No comments were received.

9. Guidance

Six public notices covering CCL are available at www.hmrc.gov.uk. Where appropriate these will be amended before 1 April 2013 to reflect the removal of the CHP indirect supplies exemption.

10. Impact

A Tax Information and Impact Note (TIIN) covering this instrument was published on 6 December 2011 alongside a draft of the Finance Bill 2012 and this instrument. An updated TIIN was published on Budget day, 21 March 2012. It is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is a general tax provision and the same for all operators of CHP stations within the CHPQA programme.

11.3 The basis for the final decision on what action to take to assist small business is described in paragraphs 7.1 to 7.8, so no such action is taken for this general tax provision.

12. Monitoring & review

Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Excise, Customs, Stamps and Money Directorate of HMRC.

13. Contact

Cathy Smith at HMRC Tel: 020 7147 0668 or email: cathy.smith2@hmrc.gsi.gov.uk can answer any queries regarding the instrument.