

2013 No. 657

EXCISE

**The Hydrocarbon Oil Duties (Reliefs for Electricity Generation)
(Amendments for Carbon Price Support) Regulations 2013**

<i>Made</i> - - - -	<i>19th March 2013</i>
<i>Laid before Parliament</i>	<i>20th March 2013</i>
<i>Coming into force</i> - -	<i>1st April 2013</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 20AA(1)(a) and (2) of the Hydrocarbon Oil Duties Act 1979(a):

Citation, commencement, effect and application

1.—(1) These Regulations may be cited as the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendments for Carbon Price Support) Regulations 2013 and come into force on 1st April 2013.

(2) They have effect in relation to qualifying oil or qualifying bioblend used in a generating station or combined heat and power station on or after that date.

(3) In the case of a claim for relief in relation to a quantity of qualifying oil or qualifying bioblend used to produce electricity in a generating station, or the outputs of a combined heat and power station, situated in Northern Ireland—

- (a) the amendment made by regulation 5 does not apply; and
- (b) the amendment made by regulation 7 applies as if in regulation 10 (as substituted by regulation 7)—
 - (i) in paragraph (1) “and subject to paragraph (4),” was omitted; and
 - (ii) paragraphs (4) and (5) were omitted.

(a) 1979 c. 5; section 20AA was inserted by the Finance Act 1989 (c. 26), section 2(1) and has been amended by the Finance Act 1993 (c. 34), Schedule 23, Part 1 (4); the Finance Act 1994 (c. 9), Schedule 4, Part 3, paragraphs 49 and 54; the Finance Act 2000 (c. 17), section 10(3); and the Finance Act 2008 (c. 9), Schedule 5, paragraph 17 and Schedule 6, paragraphs 24 and 30. Section 20AA provides that the Commissioners may make regulations allowing reliefs as regards any duty of excise which has been charged in respect of “hydrocarbon oil”; section 6AC (inserted by the Finance Act 2002 (c. 23), section 5(4)) provides that the Commissioners may by regulations provide for references in the Hydrocarbon Oil Duties Act 1979 to hydrocarbon oil to be construed as including references to biodiesel and bioblend and for references to duty on hydrocarbon oil to be construed as including references to duty under sections 6AA and 6AB. Regulation 3(1), (2) and (4) of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 (S.I. 2004/2065) (as amended by S.I. 2008/753) provides that references to hydrocarbon oil and to the duty on hydrocarbon oil in section 20AA(1)(a) are to be construed as including references to biodiesel and bioblend and to the duty on biodiesel and bioblend. The power to make regulations under section 20AA is conferred on “the Commissioners” and, by virtue of section 27(3), “the Commissioners” has the same meaning as given in the Customs and Excise Management Act 1979 (c. 2). Section 1(1) of that Act (as amended by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraphs 20 and 22 (b)) defines “the Commissioners” as “the Commissioners for Her Majesty's Revenue and Customs”.

Amendments to the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005

2. Amend the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005(a) as follows.

3. In regulation 2 (interpretation)—

- (a) after the definition of “fully exempt combined heat and power station” insert—
““outputs” has the meaning given by paragraph 148(9) of Schedule 6 to the Finance Act 2000(b);”
- (b) in the definition of “exempt unlicensed electricity supplier” for “14(4)” substitute “152A(1)”;
- (c) in the definition of “qualified claimant” before “combined” insert “the outputs of a”; and
- (d) in the definitions of “qualifying oil” and “relevant duty” after “11(1)” insert “, 13ZA”.

4. For paragraph (1) of regulation 3 (relief) substitute—

“(1) Relief is allowed in accordance with these Regulations if a quantity of qualifying oil or qualifying bioblend has been used to produce—

- (a) electricity in a generating station; or
- (b) the outputs of—
 - (i) a fully exempt combined heat and power station; or
 - (ii) a partly exempt combined heat and power station.”.

5. At the end of regulation 6 (amount of relief on qualifying oil or bioblend used to produce electricity in a generating station) after “paid” insert “less the relevant amount specified in Schedule 2 (Carbon Price Support Rates)”.

6. In paragraph (2) of regulations 7 and 11 (application for relief) for “the Schedule” substitute “Schedule 1”.

7. For the heading to Part 4, and regulations 9 (application of Part 4) and 10 (amount of relief) substitute—

“OUTPUTS OF A COMBINED HEAT AND POWER STATION

Application and interpretation of Part 4

9.—(1) This Part applies to relief allowed by regulation 3(1)(b).

(2) For the purposes of this Part—

- (a) a station’s threshold efficiency percentage shall be 20 per cent;
- (b) a station’s efficiency percentage is its power efficiency, as stated in its CHPQA certificate;
- (c) “CHPQA” has the meaning given in regulation 2 of the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005(c);
- (d) “CHPQA certificate” means a certificate issued in respect of a combined heat and power station following assessment of the station against criteria set out in the CHPQA; and
- (e) “relevant annual operation” means the annual operation to which the application for relief relates.

(a) S.I. 2005/3320; relevant amending instruments are 2007/2191 and 2008/753.

(b) 2000 c.17.

(c) S.I. 2005/1714.

Amount of relief

10.—(1) Except where paragraph (2) applies, and subject to paragraph (4), the amount allowed is the amount of relevant duty that has been charged and paid on qualifying oil or qualifying bioblend used to produce outputs of the station in the relevant annual operation.

(2) Where the efficiency percentage of the station is less than the threshold efficiency percentage of that station, the amount allowed is the duty that has been charged and paid on the relevant fraction of the qualifying oil or qualifying bioblend.

(3) For the purposes of paragraph (2), the relevant fraction is the fraction—

- (i) whose numerator is the efficiency percentage for the station, and
- (ii) whose denominator is the threshold efficiency percentage for the relevant annual operation.

(4) Where a quantity of the qualifying oil or qualifying bioblend used to produce outputs of the station is referable to the production of electricity in the relevant annual operation, the amount of relief allowed under paragraphs (1) and (2) is the amount of duty that has been charged and paid on the quantity that is so referable less the relevant amount specified in Schedule 2 (Carbon Price Support Rates).

(5) For the purposes of paragraph (4), the quantity of qualifying oil or qualifying bioblend that is referable to the production of electricity is such quantity as is determined by applying the percentage of total fuels referable to the production of electricity stated in the station's CHPQA certificate to the quantity of qualifying oil or qualifying bioblend used to produce outputs of the station in the relevant annual operation.”.

8. In paragraphs (2)(a) and (3) of regulation 13 (general conditions), and paragraph (c) of the Schedule (particulars to be contained in the application), after “electricity” insert “or outputs of a combined heat and power station”.

9. Re-number the Schedule “Schedule 1” and, after that Schedule, insert—

“SCHEDULE 2 Regulations 6 and 10(4)

CARBON PRICE SUPPORT RATES

Fuel	1st April 2013 to 31st March 2014	1st April 2014 to 31st March 2015	On and after 1st April 2015
Qualifying oil on which a rebate has been allowed under section 11(1)(a), 13ZA(a) or 14(1) of the Hydrocarbon Oil Duties Act 1979 (HODA) (fuel oil, certain heavy oil used for heating etc. and light oil for use as furnace fuel)	£0.01568 per litre	£0.03011 per litre	£0.05730 per litre
Qualifying oil on which a rebate has been allowed under section 11(1)(b) of	£0.01365 per litre	£0.02642 per litre	£0.04990 per litre”

(a) Section 13ZA was inserted by the Finance Act 2008 (c. 9), Schedule 6, paragraph 28.

HODA (gas oil) and qualifying bioblend			
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*Edward Troup
Jim Harra*

19th March 2013

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (S.I. 2005/3320) (“the principal Regulations”) which introduced a relief from excise duty for rebated oils used to produce electricity. Except in the case of a claim for relief for rebated oils used to produce electricity in a generating station, or the outputs of a combined heat and power station, situated in Northern Ireland, the Regulations reduce the amount of relief that can be claimed by the amounts specified in Schedule 2 (as inserted by regulation 9) (“the Carbon Price Support rates”).

Regulation 3 inserts a definition of “outputs” in relation to a combined heat and power (CHP) station and amends the definition of “qualifying oil” to include heavy oil on which a rebate has been allowed under section 13ZA of the Hydrocarbon Oil Duties Act 1979. Consequential amendments are also made to the definitions of “qualifying duty” and “qualified claimant”.

Regulation 4 amends regulation 3 of the principal Regulations so that it applies to qualifying oil or qualifying bioblend used to produce outputs of a CHP station.

Regulation 5 reduces the amount of relief that is allowed on qualifying oil or qualifying bioblend used to generate electricity in a generating station by the Carbon Price Support rates.

Regulation 6 makes consequential amendments to regulations 7 and 11 of the principal Regulations as a result of the re-numbering of the Schedule.

Regulation 7 re-names the heading to Part 4 of the principal Regulations and substitutes regulations 9 and 10 with new regulations 9 and 10.

New regulation 9 specifies the relief to which Part 4 applies and contains interpretation provisions.

New regulation 10 provides for relief on qualifying oil or qualifying bioblend used to produce outputs of a CHP station. The relief is scaled back according to the efficiency percentage of the station and, where a quantity of the oil or bioblend is referable to the production of electricity in the station (as determined in accordance with new regulation 10(5)), the amount of relief allowed is reduced by the Carbon Price Support rates.

Regulation 8 makes consequential amendments to regulation 13 of, and the Schedule to, the principal Regulations.

Regulation 9 re-numbers the Schedule to the principal Regulations and inserts new Schedule 2 which specifies the Carbon Price Support rates.

A Tax Information and Impact Note (TIIN) covering this instrument was published on 11th December 2012 alongside draft clauses of the Finance Bill 2013 and this instrument. This has been updated by a further TIIN as a result of changes to the impacts as a result of this instrument and both TIINs are available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

STATUTORY INSTRUMENTS

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