

# Carbon Price Floor: Additional Legislative Provisions

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## Who is likely to be affected?

Generators of fossil-fuel based electricity located within the UK and UK-based businesses that supply fossil fuels to generators of electricity, including power stations and auto-generators.

## General description of the measure

Following the announcement at Budget 2011 that a carbon price floor would be introduced on 1 April 2013, most of the primary legislative provisions were included in Finance Act 2011. Legislation in Finance Bill 2012 will introduce the following four additional provisions, the first two of which were announced at Budget 2011:

- lower carbon price support (CPS) rates of climate change levy (CCL) and fuel duty for supplies of fossil fuels to good-quality combined heat and power (CHP) stations that are intended to be used to generate electricity. The levels of the lower rates will be announced at Budget 2012;
- abated CPS rates of CCL for supplies of fossil fuels to generation stations fitted with carbon capture and storage (CCS) technology;
- clarification over which person will be responsible for charging and accounting for the CPS rates of CCL; and
- changes to the taxation under the carbon price floor of solid fuels from weight (i.e. kilogram) to heat / calorific value (i.e. joule).

The draft legislation also includes provisions for setting the CPS rates of CCL for the year 2014-15, details of which will be announced at Budget 2012. A number of more detailed provisions are also included in the draft primary legislation.

The draft secondary legislation setting out the detailed administrative provisions to enable HM Revenue & Customs (HMRC) to administer the carbon price floor is also being published today.

## Policy objective

The carbon price floor is designed to encourage additional investment in low-carbon power generation by providing greater support and certainty to the carbon price. The introduction of reliefs for supplies of fossil fuels to CHP stations and to generating stations with CCS technology recognises the contribution these technologies make in reducing CO<sub>2</sub> emissions.

This policy supports the Government's desire to make the tax system greener.

## Background to the measure

In Budget 2011, the Government announced it would introduce a carbon price floor from 1 April 2013 to support investment in low-carbon generation. Supplies of fossil fuels used in most forms of electricity generation will become liable either to fuel duty or CCL from that date. Such supplies will be charged at newly created CPS rates of fuel duty (oils) or CCL (other fossil fuels), with the rate for each type of fuel determined by its average carbon content. The CPS rates will reflect the differential between the futures market price of carbon and the floor price determined by the Government.

Legislation to implement most of the primary price floor provisions is contained in Finance Act 2011.

Budget 2011 announced that Finance Bill 2012 would include reliefs for supplies of fossil fuels to CHP stations and to generating stations using CCS technology.

Since Budget 2011, HM Treasury and HMRC have continued to discuss implementation issues with interested parties. Draft primary and secondary legislation, published on 6 December 2011, reflects the outcome of those discussions.

## **Detailed proposal**

### **Operative date**

These measures will have effect for supplies of fossil fuels to generators of electricity made on or after 1 April 2013.

### **Current law**

Schedule 6 to the Finance Act 2000 contains the primary legislation for CCL. Paragraph 14 exempts from the levy supplies of solid fuels, liquefied petroleum gas and gas used for the generation of electricity. Section 78 of and Schedule 20 to the Finance Act 2011 removes this exemption and introduces new CPS rates of CCL for leviable fossil fuels used in electricity generation, both with effect from 1 April 2013.

The Climate Change Levy (General) Regulations 2001 (SI 2001/838) govern the administration of CCL.

The Climate Change Levy (Combined Heat and Power Stations) Regulations 2005 (SI 2005/1714) determine, among other things, the extent to which supplies to a CHP station can be exempt from CCL.

The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (SI 2005/3320) provide relief from fuel duty for oils used to generate electricity in a generating station or CHP station.

### **Proposed revisions**

The changes summarised under *General description of the measure* above will be introduced by both primary and secondary legislation.

Legislation will be introduced in Finance Bill 2012 to amend Schedule 6 to the Finance Act 2000 to make changes affecting the CPS rates of CCL. It will:

- introduce lower CPS rates for supplies of fossil fuels to good-quality CHP stations and specify how CHP stations that do not achieve the threshold efficiency percentage calculate the extent to which these supplies are entitled to the lower CPS rates;
- introduce abated CPS rates for supplies of fossil fuels to power stations fitted with CCS technology – the abatement will reflect the level of performance of the station;
- require electricity generators, who are not auto-generators or CHP stations, that have a capacity of 50 mega watts per hour or more to account, declare and pay the appropriate CPS rates;
- amend the CCL deemed supply rules set out in paragraph 24, to ensure that supplies of fossil fuels on which CPS rates have not been charged become liable to these rates where there is a change of intention of the person receiving the supply;
- amend paragraph 63 to enable a person who has overpaid CPS rates to reclaim the amount overpaid from HMRC; and,

- amend paragraph 61 to enable HMRC to publish on its website a list of all generators that self-account for CPS rates and the location of every UK-based power station operated by those self-accounting generators.

Three statutory instruments are also being published in draft today:

- The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendment) Regulations 2013 will amend the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 so that oils used to generate electricity in a generating or CHP station will no longer be fully relieved of fuel duty, which will in effect make such oils subject to CPS rates of fuel duty.
- The Climate Change Levy (General) (Amendment) Regulations 2012 will amend the Climate Change Levy (General) Regulations 2001 to:
  - enable HMRC to administer the CPS rates of CCL;
  - introduce definitions for “CPS abated-rate supply”, “CPS lower-rate supply”, and “supplier” for CPS purposes; and
  - set out the formulae for calculating how much of a supply is subject to the CPS rates of CCL for supplies of leviable fossil fuels to CHP stations and electricity-generating stations using CCS technology.
- The Climate Change Levy (Combined Heat and Power Stations) (Amendment) Regulations 2013 will amend the Climate Change Levy (Combined Heat and Power) Regulations 2005 to ensure that the amended Regulations apply to supplies to CHP stations liable to the CPS rates of CCL.

## Summary of impacts

At Budget 2011, the Government published a summary of impacts for the carbon price floor. The boxes below have only been completed where the four measures announced today change that impact assessment.

<b>Exchequer impact (£m)</b>	2011-12	2012-13	2013-14	2014-15	2015-16
	The Exchequer impact will depend on the exact rates, which will be set out at Budget 2012.				
<b>Economic impact</b>	There will be no significant wider economic impacts as a result of these changes.				
<b>Impact on individuals and households</b>	All these changes affect only businesses, therefore any impact on individuals and households should be minimal.				
<b>Equalities impacts</b>	The proposed changes will affect businesses and other organisations that are CHPs or use solid fuels to produce electricity. As such, there should be no differential impact on different equality groups.				
<b>Impact on business including civil society organisations</b>	The major electricity generators have indicated that allowing them to self-account will deliver greater certainty for them and reduce the indirect costs of complying with the carbon price floor. The change in compliance costs from this change is estimated to be negligible.				

<b>Operational impact (£m) (HMRC or other)</b>	Additional operational costs for HMRC will be negligible.
<b>Other impacts</b>	<p><u>Competition assessment:</u> The change from taxing solid fuels by weight to heat will lower the amount of the carbon price support rate of CCL payable per tonne on most indigenous coal as this fuel, on average, contains fewer gigajoules (GJ) per tonne (around 23GJ) than coal extracted in other parts of the world (on average 25.1 GJ).</p> <p>It will also lower the tax payable on “inferior coal” (coal that contains a high proportion of incombustible material) also known as “coal slurry”. This type of coal has an energy content of between 8 and 15 GJ per tonne. A substantial proportion of this coal is located on waste heaps in the UK and can be used, when mixed with regular coal, for electricity generation. The decision to tax heat rather than weight will reduce the cost of this “inferior coal” and by doing so should support the continued reclamation of UK colliery sites currently being undertaken by UK businesses.</p> <p>Geographically, these changes will benefit the UK regions with lower energy coal and reserves of “inferior coal”, especially Wales and the North East of England.</p>

### **Monitoring and evaluation**

The Government will consider how best and when to evaluate the policy against its objective to encourage investment in low-carbon power generation.

### **Further advice**

If you have any questions about these changes, please contact Ian Moules on 020 7147 0653 (email: [ian.moules@hmrc.gsi.gov.uk](mailto:ian.moules@hmrc.gsi.gov.uk)).

**1 Climate change levy: supplies subject to the carbon price support rates**

Schedule 1 makes –

- (a) provision for and in connection with the charging of climate change levy on supplies of commodities to be used in combined heat and power stations,
- (b) provision about the persons liable to account for climate change levy charged on taxable supplies subject to the carbon price support rates, and
- (c) other provision about taxable supplies subject to the carbon price support rates.

## SCHEDULES

### SCHEDULE 1

Section 1

#### CLIMATE CHANGE LEVY: TAXABLE SUPPLIES SUBJECT TO THE CARBON PRICE SUPPORT RATES

- 1 Schedule 6 to FA 2000 (climate change levy) is amended as follows.
- 2 In paragraph 4(2)(b) (definition of “taxable supply”) after “24” insert “, 42D”.
- 3 (1) Paragraph 6 (supplies of gas) is amended as follows.
  - (2) In sub-paragraph (1A) for “but not sub-paragraph” substitute “or”.
  - (3) In sub-paragraph (2A) after “24” insert “, 42D”.
- 4 (1) Paragraph 15 (exemption: supplies to CHP stations) is amended as follows.
  - (2) In sub-paragraph (1) –
    - (a) for “a taxable commodity” substitute “electricity”, and
    - (b) in paragraph (a) for “commodity” substitute “electricity”.
  - (3) In sub-paragraph (2) –
    - (a) in paragraph (a) for “a taxable commodity” substitute “electricity”, and
    - (b) in paragraph (b) for “commodity” substitute “electricity”.
  - (4) In sub-paragraph (3) for “a taxable commodity” substitute “electricity”.
- 5 In paragraph 40(1) (person liable to account for levy) after “applies” insert “or as otherwise provided by paragraph 40A”.
- 6 After paragraph 40 insert –
  - “40A(1) This paragraph applies to a taxable supply subject to the carbon price support rates (see paragraph 42A).
  - (2) If sub-paragraph (3), (4) or (5) applies, the person liable to account for the levy charged on the supply is the person to whom the supply is made.
  - (3) This sub-paragraph applies if the commodity supplied is to be used for producing electricity in a station –
    - (a) which is not a combined heat and power station,
    - (b) which is not operated by an auto-generator, and
    - (c) the capacity of which for producing electricity through the burning of taxable commodities is at least 50MW per hour.
  - (4) This sub-paragraph applies if the commodity supplied is to be used for producing electricity in a station which –
    - (a) is not a combined heat and power station,

- (b) is not operated by an auto-generator, and
    - (c) is one of a number of stations situated in the United Kingdom—
      - (i) which are operated by the same person or by bodies corporate which are members of the same group, and
      - (ii) the capacity of which for producing electricity through the burning of taxable commodities is, taken together, at least 50MW per hour.
  - (5) This sub-paragraph applies if the commodity supplied is to be used for producing electricity in a combined heat and power station which—
    - (a) is not operated by an auto-generator, and
    - (b) is one of a number of stations situated in the United Kingdom—
      - (i) which are operated by the same person or by bodies corporate which are members of the same group,
      - (ii) at least one of which is not a combined heat and power station, and
      - (iii) the capacity of which for producing electricity through the burning of taxable commodities is, taken together, at least 50MW per hour,and, when the supply is made, the person to whom the supply is made has elected for this sub-paragraph to apply to supplies to the station.
  - (6) An election for the purposes of sub-paragraph (5) —
    - (a) must be notified to the Commissioners,
    - (b) takes effect when it is notified or on a later date specified in the notification, and
    - (c) may be revoked by a further notification to the Commissioners with effect from a date specified in the notification, which must be no earlier than 3 months after the date on which the notification is given.
  - (7) A notification under sub-paragraph (6) must contain, or be accompanied by, any information or other particulars required by the Commissioners.
  - (8) The Commissioners may publish, as they think fit and by such means as they think fit, information relating to the operation of this paragraph, including (for example) the names of stations covered by any of sub-paragraphs (3) to (5).
  - (9) Information may be published notwithstanding any obligation not to disclose the information that would otherwise apply.”
- 7 (1) Paragraph 42A (supplies subject to the carbon price support rates) is amended as follows.
- (2) In sub-paragraph (2)—
    - (a) for the “and” after paragraph (a) substitute “or”, and
    - (b) in paragraph (b) for “not” substitute “otherwise”.

- (3) In sub-paragraph (3) after “taxable commodity” insert “, apart from electricity,”.
- (4) After sub-paragraph (5) insert –  
 “(5A) Sub-paragraph (4) needs to be read with paragraphs 42B and 42C.”
- (5) In sub-paragraph (6) after “paragraph” insert “and paragraphs 42B and 42C”.
- (6) For sub-paragraph (7) substitute –  
 “(7) Regulations under sub-paragraph (6) may, in particular, include provision –  
 (a) for determining whether or not a taxable supply is subject to the carbon price support rates,  
 (b) if the supply is subject to those rates, for determining whether or not paragraph 42B(2) or 42C(2) applies in relation to the supply, and  
 (c) if paragraph 42B(2) or 42C(2) applies in relation to the supply, for determining the reduction in the relevant carbon price support rate.”

8 After paragraph 42A insert –

- “42B(1) Sub-paragraph (2) applies for the purposes of paragraph 42A(4) if the taxable supply is within paragraph 42A(3).
- (2) In relation to the relevant fraction of the supply, only [...%] of the relevant carbon price support rate is to be applied (instead of the full rate).
- (3) The “relevant fraction” of the supply is the fraction –  
 (a) whose numerator is the efficiency percentage for the combined heat and power station in question at the time the supply is made, and  
 (b) whose denominator is the threshold efficiency percentage for that station at that time.
- (4) For the purposes of sub-paragraph (3) –  
 (a) the “threshold efficiency percentage” for a combined heat and power station is the percentage set as the threshold efficiency percentage for the station by regulations made by the Treasury, and  
 (b) the “efficiency percentage” for a combined heat and power station is to be determined in accordance with regulations under paragraph 149.
- (5) In paragraph 42(3) the reference to a reduced-rate supply includes a reference to a supply in relation to which sub-paragraph (2) above applies.

- 42C (1) Sub-paragraph (2) applies for the purposes of paragraph 42A(4) if –  
 (a) the taxable supply is a supply of a taxable commodity to be used for producing electricity in a station, and  
 (b) in the calendar year in which the supply is made, carbon capture and storage technology is operated in relation to

carbon dioxide generated by the station in producing electricity.

- (2) In relation to the supply, only C% of the relevant carbon price support rate is to be applied (instead of the full rate).
- (3) “C%” is 100% minus the station’s carbon capture percentage for the calendar year.
- (4) The station’s “carbon capture percentage” for the calendar year is the percentage of the station’s generated carbon dioxide for that year which, through the operation of the carbon capture and storage technology, is –
  - (a) captured, and
  - (b) then disposed of by way of permanent storage.
- (5) The station’s “generated carbon dioxide” for the calendar year is the amount of carbon dioxide generated in the year by the station in producing electricity through the burning of taxable commodities.
- (6) In this paragraph “carbon capture and storage technology” has the meaning given by section 7(3) of the Energy Act 2010.
- (7) Sub-paragraph (8) applies for the purposes of sub-paragraph (4) in relation to any carbon dioxide if –
  - (a) the carbon dioxide is captured but then leaks out and therefore is not disposed of by way of permanent storage, but
  - (b) the leak does not occur from –
    - (i) within the curtilage of the station, or
    - (ii) any pipeline or other facility or installation outside that curtilage which is operated by the station’s operator or a person connected with the station’s operator.

Section 1122 of the Corporation Tax Act 2010 applies for the purposes of paragraph (b)(ii).

- (8) The carbon dioxide is to be treated as if it had been disposed of by way of permanent storage.
- (9) If the percentage mentioned in sub-paragraph (4) is not a whole number, it is to be rounded to the nearest whole number (taking 0.5% as nearest to the next whole number).

42D (1) This paragraph applies if –

- (a) a taxable supply (“the original supply”) subject to the carbon price support rates has been made to any person (“the recipient”),
- (b) the original supply was made on the basis that paragraph 42B(2) or 42C(2) applied in relation to the original supply, and
- (c) it is later determined –
  - (i) that paragraph 42B(2) or 42C(2) did not apply in relation to the original supply, or

- (ii) that the reduction given, by virtue of paragraph 42B(2) or 42C(2), in the amount payable by way of levy on the original supply was too much.
- (2) For the purposes of this Schedule –
- (a) the recipient is deemed to make a taxable supply to itself of the taxable commodity in question, and
  - (b) the amount payable by way of levy on that deemed supply is –
    - (i) the total amount payable on the original supply on the basis of the later determination mentioned in sub-paragraph (1)(c), less
    - (ii) the amount previously determined to be payable on the original supply.”
- 9 After paragraph 62(1)(b) (tax credits) insert –
- “(ba) after a taxable supply subject to the carbon price support rates (see paragraph 42A) is made on the basis that paragraph 42B(2) or 42C(2) does not apply in relation to the supply, it is determined that paragraph 42B(2) or 42C(2) does apply;
  - (bb) after a taxable supply subject to the carbon price support rates is made on the basis that paragraph 42B(2) or 42C(2) applies in relation to the supply, it is determined that the reduction given, by virtue of paragraph 42B(2) or 42C(2), in the amount payable by way of levy on the supply was too little;”.
- 10 In paragraph 101(2)(a) (civil penalties: incorrect certificates) –
- (a) omit the “or” after sub-paragraph (iv), and
  - (b) omit the “and” after sub-paragraph (v) and after that sub-paragraph insert –
    - “(vi) a taxable supply (or taxable supplies) in relation to which paragraph 42B(2) applies, or
    - (vii) a taxable supply (or taxable supplies) in relation to which paragraph 42C(2) applies, and”.
- 11 In paragraph 146(3) (statutory instruments subject to affirmative procedure) before “52,” insert “42B(4)(a),”.

**EXPLANATORY NOTE**

**CLIMATE CHANGE LEVY: TAXABLE SUPPLIES SUBJECT TO THE CARBON PRICE SUPPORT RATES**

**SUMMARY**

1. This schedule amends Schedule 6 to the Finance Act 2000 (“Schedule 6”) in three ways. First, it removes the exemption from the carbon price support rates of climate change levy (CCL) for supplies of fossil fuels supplied to combined heat and power (CHP) stations and introduces a lower rate for such supplies. Second, it introduces an abated rate for supplies of fossil fuels to power generating stations equipped with carbon capture and storage (CCS) technology. Third, it requires certain power generators to self-account for the carbon price support rates of CCL.
2. The Schedule also provides for the Commissioners for HM Revenue and Customs (HMRC) to make regulations to give effect to the new provisions and makes some consequential changes to Schedule 6.
3. All these changes will have effect on and after 1 April 2013.

**DETAILS OF THE SCHEDULE**

4. Paragraph 1 provides for the amendment of Schedule 6.
5. Paragraph 2 amends paragraph 4(2)(b) of Schedule 6 so that deemed supplies under paragraph 42D are included in the definition of “taxable supply”.
6. Paragraph 3 amends paragraphs 6(1A) and (2B) of Schedule 6 to make the supply of gas to CHP stations (including deemed supplies under paragraph 42D) liable to the carbon price support rates of CCL.
7. Paragraph 4 amends paragraph 15 of Schedule 6 so that the exemption in that paragraph applies only to the supply of electricity.
8. Paragraph 5 amends paragraph 40(1) of Schedule 6 to enable certain registered persons to self-account for the carbon price support rates of CCL.
9. Paragraph 6 inserts a new paragraph 40A into Schedule 6 to require electricity generators that are not auto-generators, CHP stations, or small-scale electricity generators to self-account for the carbon price support rates of CCL. It also provides for those generators to elect to

self-account for any supplies of fossil fuels made to any CHP station that they operate.

10. Paragraph 7 amends paragraph 42A of Schedule 6 to make supplies of fossil fuels to CHP stations liable to the carbon price support rates of CCL and to provide that the Commissioners for HMRC may make Regulations to give effect to these rates.
11. Paragraph 8 inserts three new paragraphs 42B, 42C and 42D into Schedule 6.
  - New paragraph 42B(1) provides that new paragraph 42B(2) applies for the purposes of determining the amount of CCL payable at the carbon price support rates on supplies of fossil fuels to a CHP station.
  - New paragraph 42B(2) states the percentage of the carbon price support rates of CCL that will apply to “the relevant fraction” of supplies of fossil fuels to a CHP station and new paragraph 42B(3) sets out the formula to be used to calculate that fraction.
  - New paragraph 42B(4) states, for the purposes of new paragraph 42B(3), that the “threshold efficiency percentage” for a CHP station is 20 per cent.
  - New paragraph 42B(5) provides that the reference to a reduced rate supply in paragraph 42(3) includes a supply in relation to which new paragraph 42B(2) applies for the purpose of citing the title and publication reference of Commission Regulation (EC) No 800/2008 (General block exemption Regulation).
  - New paragraph 42C(1) provides for the new paragraph 42C(2) to apply for the purposes of determining the amount of CCL payable at the carbon price support rates where there is a supply of fossil fuels to an electricity generator who uses CCS technology in any calendar year.
  - New paragraphs 42C(2) and (3) reduce the carbon price support rates of CCL by the carbon capture percentage.
  - New paragraph 42C(4) specifies how a generating station’s “carbon capture percentage” is to be calculated.
  - New paragraph 42C(5) defines “generated carbon dioxide” for the purposes of new paragraph 42C(4).
  - New paragraph 42C(6) defines “carbon capture and storage technology”.

- New paragraph 42C(7) provides for carbon dioxide captured by a generating station using CCS technology that leaks before it is permanently stored not to affect the station's "carbon capture percentage" where the leak did not occur within the grounds of the station nor in any pipeline, facility or installation maintained by the operator of the station or a person connected to the operator.
  - New paragraph 42C(8) provides for carbon dioxide captured that has not leaked in any of the situations set out in new paragraph 42C(6) to be treated as permanently stored.
  - New paragraph 42C(9) provides for the "carbon capture percentage" where it is not a whole number to be rounded to the nearest whole number.
  - New paragraph 42D(1) provides for new paragraph 42D(2) to apply where a taxable supply of fossil fuels to a generating station has been made on the basis that the lower carbon price support rates of CCL provided for in new paragraphs 42B(2) or 42C(2) applied but it is later determined that either a) it should have been subject to the full carbon price support rate; or b) the level of reduction applied was too much.
  - New paragraph 42D(2) deems that where new paragraph 42D(1) applies, the recipient of the taxable supply makes a taxable supply to itself. The value of this self-supply is the difference between the amount calculated as now due and the amount originally paid.
12. Paragraph 9 amends paragraph 62(1) of Schedule 6 to provide for a recipient to reclaim the appropriate amount of carbon price support rate overpaid where a) a taxable supply was made on the basis that it was not subject to a lower carbon price support rate and it is later determined that it should have been or b) the amount of reduction originally given under new paragraphs 42B(2) or 42C(2) was too small.
13. Paragraph 10 amends paragraph 101(2)(a) of Schedule 6 to provide for the Commissioners for HMRC to levy civil penalties where a generator has issued an incorrect certificate in relation to the supplies of fossil fuels to either a CHP station or a power station fitted with CCS technology.
14. Paragraph 11 amends paragraph 146(3) of Schedule 6 to require regulations made by the Treasury under new paragraph 42B(4)(a) of Schedule 6 to be subject to the affirmative resolution procedure.

**BACKGROUND NOTE**

15. In Budget 2011, the Chancellor announced that the Government would reform the CCL and fuel duty to provide more certainty and support to the carbon price and to encourage investment in low-carbon electricity. This built on the commitments made in the Coalition's programme for government,<sup>1</sup> to:
  - introduce a floor price for carbon;
  - increase the proportion of tax revenues from environmental taxes; and
  - make the tax system more competitive, simpler, fairer and greener.
16. Legislation to implement this policy was enacted as section 78 of, and Schedule 20 to, the Finance Act 2011. At Budget 2011, the Chancellor also announced that further legislation on the carbon price floor would be included in Finance Bill 2012 to introduce reliefs for supplies to CHP stations and to those generating stations that use CCS technology.
17. The Government also committed HM Treasury and HMRC to consult business about the implementation of the carbon price support rates. In direct response to business representations, the Government has decided to require generators with a generating capacity of 50 mega watts per hour or more, whose primary purpose is to generate electricity for sale to third parties, to self-account for the carbon price support rates of CCL. This will simplify the operation of the tax for both businesses and HMRC.
18. The clause and schedule contain the further legislation announced at Budget 2011 and that arising from further consultation with business. Secondary legislation provided for by the schedule and by Schedule 20 to the Finance Act 2011 is published alongside the draft Finance Bill 2012 to deal with changes to CCL of a more administrative nature.
19. The lower rate for supplies of fossil fuels to CHP stations is a State aid. However, in line with EC Directive 2003/96/EC the UK is permitted to use Commission Regulation (EC) No 800/2008, which simplifies the clearance process for State aid schemes. Article 3(1) of that Regulation requires the aid scheme to make express reference to the Regulation in the legislation.
20. Oils are not subject to CCL but fuel duty is payable at a rebated rate at the duty point the oil (for example, when the oil leaves the

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<sup>1</sup> *The Coalition: our programme for government*, HM Government, 20 May 2010.

refinery). Currently, the duty can be reclaimed in full by the electricity generator but, as part of the Government's proposals for a carbon price floor, the Government indicated that it would reduce the amount of fuel duty that can be reclaimed and to base the amount that can be reclaimed by taking account of the carbon content of the oils. The Statutory Instrument to implement this change was published for consultation on 6 December 2011 alongside the draft legislation for Finance Bill 2012 and the draft secondary legislation containing the CCL administrative provisions mentioned above.

21. If you have any questions about this change, or comments on the legislation, please contact Ian Moules on 020 7147 0653 (email: [ian.moules@hmrc.gsi.gov.uk](mailto:ian.moules@hmrc.gsi.gov.uk)).

**2012 No.0000**

**CLIMATE CHANGE LEVY**

**The Climate Change Levy (General) (Amendment) Regulations  
2012**

<i>Made</i>	- - - -	<i>[November 2012]</i>
<i>Laid before the House of Commons</i>		<i>[November 2012]</i>
<i>Coming into force</i>		
<i>Regulation 15(b)</i>		<i>1st January 2013</i>
<i>Remainder</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 30 of, and paragraphs 22, 42A(6) and (7), 44(3) and (4), 62(1)(ba) and (bb), 125 and 146 of Schedule 6 to, the Finance Act 2000(a):

**Citation and commencement**

1.—(1) These Regulations may be cited as the Climate Change Levy (General) (Amendment) Regulations 2012.

(2) Apart from regulation 15(b), they come into force on 1st April 2013.

(3) Regulation 15(b) comes into force on 1st January 2013.

**Amendments to the Climate Change Levy (General) Regulations 2001**

2. Amend the Climate Change Levy (General) Regulations 2001(b) as follows.

3. In paragraph (1) of regulation 2 (general interpretation)—

(a) after the definition for “CCL” insert—

““CPS abated-rate supply” refers to a taxable supply subject to the carbon price support rates and in relation to which paragraph 42C(2)(a) of the Act applies (reduction in amount of CCL payable);

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(a) 2000 c. 17; paragraph 42A was inserted by paragraph 6 of Schedule 20 to the Finance Act 2011(c. 11) and amended by paragraph [xx] of Schedule [xx] to the Finance Act 2012 (c.). Sub-paragraphs 62 (ba) and (bb) were inserted by paragraph [xx] of Schedule [xx] to the Finance Act 2012. Paragraph 125 has been amended by the Finance Act 2003 (c. 14), section 192(9), the Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), Schedule 1, paragraphs 20(1) and (5) and the Finance Act 2009 (c. 10), Schedule 50, paragraphs 18 and 19. Paragraph 146 has been amended by the Finance Act 2003, section 188(2)(c) and S.I. 2009/571, Schedule 1, paragraph 20(1) and (7). The regulations made under the powers cited are to be made by the Commissioners; paragraph 147 of Schedule 6 to the Finance Act 2000 defines “the Commissioners” as meaning the Commissioners of Customs and Excise. Section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) 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) S.I. 2001/838; relevant amending instruments are S.I. 2003/604, 2005/1716, 2007/2903, 2011/684.

“CPS lower-rate supply” refers to a taxable supply subject to the carbon price support rates and in relation to which paragraph 42B(2)(b) of the Act applies (lower rate of CCL payable);”;

(b) in the definition of “supplier”—

(i) omit the “and” before “paragraph 40(2)”; and

(ii) after “utilities” insert “and paragraph 40A(c) of the Act—certain taxable supplies subject to the carbon price support rates”.

4. For sub-paragraph (c)(ii) of regulation 8 (obligation to keep records) substitute—

“(ii) a CPS abated-rate supply, a CPS lower-rate supply or a reduced-rate supply;”.

5. In regulation 11 (other tax credits: entitlement)—

(a) in paragraph (1)—

(i) in sub-paragraph (c) after “a reduced-rate supply” (in both places) insert “, a CPS abated-rate supply or a CPS lower-rate supply”;

(ii) after sub-paragraph (c) insert—

“(ca) after a CPS lower-rate supply or a CPS abated-rate supply is made it is determined that the reduction given, by virtue of paragraph 42B(2) or 42C(2) of the Act, in the amount payable by way of levy on the supply was too little;”;

(b) in sub-paragraph (2)(a) after “(c),” insert “(ca),”.

6. In paragraph (1) of regulation 12 (tax credits: general) after “exempt” insert “, CPS abated-rate, CPS lower-rate”.

7. In regulation 33, (special rules for excluded, exempt and reduced-rate supplies), and the heading to that regulation, after “exempt (in both places) insert “, CPS abated-rate, CPS lower-rate”.

8. In the heading to Part III (Excluded, Exempt and Reduced-rate supplies) after “**EXEMPT**” insert “, **CPS ABATED-RATE, CPS LOWER-RATE**”.

9. In regulation 35 (delivery of supplier certificates)—

(a) in paragraphs (1) and (3), before “reduced-rate” insert “CPS abated-rate, CPS lower-rate or”;

(b) in sub-paragraph (2)(a), before “a reduced-rate” insert “a CPS abated-rate supply in paragraph 42C(1) of the Act (abated rate for supplies to stations operating carbon capture and storage technology), a CPS lower-rate supply in paragraph 42B(1) of the Act (lower rate for supplies to combined heat and power stations) or, as the case may be,”.

10. In regulation 37 (form and other requirements relating to supplier certificates) after subparagraph (4)(b) insert—

“(ba) a supplier certificate relating to a CPS abated-rate supply with a supplier certificate relating to any other supply;

(bb) a supplier certificate relating to a CPS lower-rate supply with a supplier certificate relating to any other supply;”.

11. In paragraph (2) of regulation 39 (special cases) after “utilities” insert “and paragraph 40A of the Act—certain taxable supplies subject to the carbon price support rates”.

12. In paragraph (1) of regulation 51A (interpretation of Part 4A) in the definition of “QPO electricity”—

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(a) Paragraph 42C was inserted by paragraph [xx] of Schedule [xx] to the Finance Act 2012 (c).

(b) Paragraph 42B was inserted by paragraph [xx] of Schedule [x] to the Finance Act 2012.

(c) Paragraph 40A was inserted by paragraph [xx] of Schedule [x] to the Finance Act 2012.

- (a) at the end of sub-paragraph (b) insert “and”; and
- (b) after that sub-paragraph insert—
  - “(c) in either case, has been produced before 1st April 2013;”.

**13.** In regulation 51H (giving effect to Schedule 2 and the CHP Relief Condition)—

- (a) in paragraph (1)(a) for “taxable commodities” substitute “electricity”; and
- (b) in paragraph (4) after “exempt” insert “, CPS abated-rate, CPS lower-rate”.

**14.** In Schedule 1—

- (a) in the heading after “**EXEMPT**” insert “, **CPS ABATED-RATE, CPS LOWER-RATE**”;
- (b) in paragraph 2—
  - (i) at the beginning insert “Except in the case of a supply to which paragraph 2A or 2B applies”;
  - (ii) in the formula, substitute “ $(r \times R)$ ” for “ $R$ ”;
  - (iii) after the definition of “ $M$ ”, insert—
    - “ $r = 0.90$  in the case of electricity, and in any other case  $0.65$ .”;
  - (iv) for “ $0.65R = 65\%$  of”, substitute “ $R =$ ”;
- (c) after paragraph 2 insert—

“**2A.** In the case of a CPS abated-rate supply CCL at the relevant carbon price support rate (“the CPS rate”) is not due on the percentage of the supply properly determined in accordance with the following formula;

$$P = \frac{R}{S} \times 100$$

Where—

$P$  = the percentage of the supply on which the CPS rate is not due (“the CPS abated-rate relief percentage”) which must not be more than 100 per cent.

$R$  = the amount of carbon dioxide captured by the recipient of the supply in the calendar year and then disposed of by way of permanent storage.

$S$  = the amount of carbon dioxide generated by the recipient of the supply in producing electricity through the burning of taxable commodities in the calendar year.

**2B.** In the case of a CPS lower-rate supply CCL at the relevant CPS rate is not due on the percentage of the supply properly determined in accordance with the following formula (“the CPS lower-rate relief formula”);

$$P = M \times (1 - T) \times 100$$

Where—

$P$  = the percentage of the supply on which the CPS rate is not due (“the CPS lower-rate relief percentage”) which must not be more than 100 per cent.

$M$  = the relevant fraction of the supply (for which see paragraph 42B(3) of the Act).

$T = [x]$ .”;

(d) in paragraph 3(1)—

- (i) after “regulation 35(2)” insert “(CPS abated-rate, CPS lower-rate and reduced rate)”;

- (ii) for “(reduced rates)” substitute “(reduced rate for certain supplies to a facility covered by a climate change agreement)”;
- (e) in paragraph 4, after “CCL relief percentage” insert “, the CPS abated-rate relief percentage or, as the case may be, the CPS lower-rate relief percentage”;
- (f) at the beginning of paragraph 5(1) for “The” substitute “Other than in the case of CPS abated-rate and CPS lower-rate supplies the”;
- (g) in paragraph 6—
  - (i) in sub-paragraph (1)(c) after “a reduced-rate supply”(in both places) insert “, a CPS abated-rate supply or a CPS lower-rate supply”;
  - (ii) after paragraph (c) insert —
    - “(ca) after a CPS lower-rate supply or a CPS abated-rate supply is made it is determined that the reduction given, by virtue of paragraph 42B(2) or 42C(2) of the Act, in the amount payable by way of levy on the supply was too little;”;
- (h) after paragraph 9C insert—

**“9D.—**(1) In the case of CPS lower-rate supplies the recipient must review the correctness of the supplier certificate no later than a reconciliation date in paragraph 9B.

(2) That correctness must be reviewed in accordance with regulation 9C(2) and (3).

(3) Sub-paragraph (4) or (5) applies if the review demonstrates that the supplier certificate was incorrect.

(4) If the CPS lower-rate relief percentage was too low, the recipient may act in accordance with paragraphs 6 to 9 (recipient’s tax credit where reduction in amount payable by way of levy on the supply was too little).

(5) If the CPS lower-rate relief percentage was too high, paragraphs 5(7) to 5(9F) apply as if —

(a) the reference in sub-paragraph (7) to “CCL relief percentage” is a reference to “CPS lower-rate relief percentage”; and

(b) sub-paragraphs (7), (8), (9) and (9C)(a) include a reference to paragraph 42D(2)(a) (deemed taxable self-supply: carbon price support rates).

(6) If the recipient does not review the accuracy of the supplier certificate in accordance with sub-paragraph (1), and the certificate was (or remains) incorrect, paragraph 101 of the Act shall apply accordingly (civil penalty for incorrect certification etc subject to reasonable excuse).

**9E.—**(1) This paragraph, and paragraph 9F, apply to CPS abated-rate supplies.

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

(3) The reconciliation day for a completed calendar year is the 60th day in the subsequent calendar year.

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

(5) A reconciliation day for an incompleting calendar year is the 60th day after the day in that calendar year on which the station ceases to operate or (other than on a temporary basis) ceases to operate carbon capture and storage technology.

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

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(a) Paragraph 42D was inserted by paragraph [x] of Schedule [x] to the Finance Act 2012.

(7) In sub-paragraph (5) and paragraph 9F(3) “carbon capture and storage technology” has the meaning given by section 7(3) of the Energy Act 2010(a).

**9F.**—(1) The recipient must review the correctness of the supplier certificate no later than the reconciliation day in paragraph 9E.

(2) That correctness must be reviewed in relation to the station’s carbon capture percentage for the relevant reconciliation span.

(3) In the case of a reconciliation span for an incompleting calendar year treat the carbon capture percentage as one determined for the period starting on 1st January in that incompleting calendar year and ending on the day immediately preceding the day on which the station ceases to operate or ceases to operate carbon capture and storage technology.

(4) 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 carbon capture percentage for the station in question in the calendar year in which that taxable commodity is supplied.

(5) If the CPS abated-rate relief percentage applied was too low, the recipient may act in accordance with paragraphs 6 to 9 (recipient’s tax credit where reduction in amount payable by way of levy on the supply was too little).

(6) If the abated-rate relief percentage applied was too high, paragraphs 5(7) to 5(9F) apply as if—

- (a) the reference in sub-paragraph (7) to “CCL relief percentage” is a reference to “CPS abated-rate relief percentage”; and
- (b) sub-paragraphs (7), (8), (9) and (9C)(a) include a reference to paragraph 42D(2) (deemed taxable self-supply: carbon price support rates).

(7) If the recipient does not review the accuracy of the supplier certificate in accordance with sub-paragraph (1), and the certificate was (or remains) incorrect, paragraph 101 of the Act shall apply accordingly (civil penalty for incorrect certification etc subject to reasonable excuse).

(8) In this paragraph “carbon capture percentage” has the meaning given in paragraph 42C(4) of the Act.”;

(i) in paragraph 12—

- (i) at the end of sub-paragraph (1A), insert “or the CPS lower-rate relief formula”;
- (ii) for paragraph (1B) substitute—

“(1B) The further certificate referred to in sub-paragraph (1A) must be delivered to the supplier—

- (a) in the case of a change to the CCL relief formula, no later than the date on which the recipient’s first annual review following the change must be completed; or
- (b) in the case of a change to the CPS-lower-rate relief formula, no later than the first reconciliation day following the change.”;

(iii) in sub-paragraph (3) after “CCL relief percentage” insert “, the CPS abated-rate relief percentage or, as the case may be, the CPS lower-rate relief percentage”.

**15.** In Schedule 2 (The CHP Relief Condition)—

- (a) in paragraph 1, after “station” insert “which are produced before 1st April 2013”.
- (b) in paragraph 11—

(i) at the end of sub-paragraph (3) insert “(but this is subject to sub-paragraphs (9) and (10))”;

(ii) after sub-paragraph (8), insert—

“(9) Sub-paragraph (10) applies where a reconciliation span relating to a reconciliation day spans 1st January 2012 to the day before a reconciliation day that falls in the calendar year 2013.

(10) Where this sub-paragraph applies—

(a) sub-paragraphs (4) and (5) do not apply; and

(b) the relevant Authority need not take any action in respect of the excessive CHP LECs that have been issued and remain unrestricted.”.

*Commissioner*

*Commissioner*

1st November 2012

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 Climate Change Levy (General) Regulations 2001 (SI 2001/838) (the “General Regulations”) and are made following the introduction of carbon price support (CPS) rates of Climate Change Levy (CCL) (“CPS rates”) and the removal of the exemption for indirect supplies of electricity produced in a combined heat and power (CHP) station (both with effect from 1st April 2013).

#### **CPS rates**

A supply of fossil fuels to a generating station with Carbon Capture and Storage technology and to a CHP station is subject to a lower CPS rate. Regulation 3 amends regulation 2 of the General Regulations to define such supplies as a “CPS abated-rate supply” and a “CPS lower-rate supply” respectively. It also amends the definition of “supplier” to include a person who is liable to self-account for CCL at the CPS rates<sup>(a)</sup>.

Regulation 4 amends regulation 8 of the General Regulations to require a registrable person to keep specified records to evidence that a supply made by or to that person was either a CPS abated-rate supply or a CPS lower-rate supply.

Regulations 5 and 6 amend regulations 11 and 12 of the General Regulations to entitle a registrable person who has overpaid either the CPS abated-rate or the CPS lower-rate to reclaim the overpayment.

Regulations 9 to 11 amend regulations 35, 37 and 39 of the General Regulations so that provisions about supplier certificates and supporting documents that apply to a reduced rate supply<sup>(b)</sup> also apply to a CPS abated-rate supply and a CPS lower-rate supply.

Regulation 14 amends Schedule 1 to the General Regulations.

The CCL relief formula in paragraph 2 of that Schedule is amended consequential on the change to the rate for reduced-rate supplies of electricity (but not for reduced-rate supplies of other taxable commodities) made by section [xx] of the Finance Act 2012 (c. ).

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(a) For self-accounting see paragraph 40A of Schedule 6 to the Finance Act 2000 (c. 17).

(b) For reduced rate supplies see paragraph 44 of Schedule 6 to the Finance Act 2000.

New paragraphs 2A, 2B and 9D to 9F are inserted, and other consequential amendments made, as a result of the introduction of CPS abated-rate and CPS lower-rate supplies.

Paragraphs 2A and 2B insert formulae for calculating the percentage of a supply on which CCL at the CPS abated-rate or the CPS lower-rate is not due.

Paragraphs 9D to 9F provide that the recipient of CPS lower-rate supplies or CPS abated-rate supplies must review the correctness of its supplier certificate in relation to its efficiency percentage or, as the case may be, its carbon capture percentage(a). They also provide for a credit where the CCL already paid was too high and for a deemed supply where the CCL already paid was too low and apply civil penalty provisions if a review is not carried out and the certificate was, or remains, incorrect.

### **CHP stations**

Certified(b) electricity produced in a CHP station may be supplied exempt from CCL(c). Regulation 12 amends the definition of “QPO electricity” in regulation 51A of the General Regulations so that electricity produced in a CHP station can only be certified if it was produced before 1st April 2013.

Regulation 15 amends Schedule 2 to the General Regulations so that the obligations in it relate only to the outputs of a CHP station produced before 1st April 2013. With effect from 1st January 2013, it also provides the relevant Authority with revised CHP Levy Exemption Certificate reconciliation arrangements in relation to CHP stations that have participated in the CHP Quality Assurance programme for the completed calendar year ending 31st December 2012.

A Tax Information and Impact Note covering this instrument was published on 6th December 2011 alongside draft clauses of the Finance Bill 2012 and this instrument and 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.

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- (a) For the meaning of “carbon capture percentage” see paragraph 42C(4) of Schedule 6 to the Finance Act 2000 (c. 17) (inserted by paragraph [x] of Schedule [x] to the Finance Act 2012).
- (b) Certification is by the Gas and Electricity Markets Authority or the Director General of Electricity Supply for Northern Ireland (now the Northern Ireland Authority for Utility Regulation), as appropriate. See regulations 51A and 51B of the General Regulations.
- (c) See the Finance Act 2000, Schedule 6, paragraph 20A and Part 4A of the General Regulations.

**EXPLANATORY MEMORANDUM TO**  
**THE CLIMATE CHANGE LEVY (GENERAL) (AMENDMENT)**  
**REGULATIONS 2012**

**2012 No.**

**1. Introduction**

This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

**2. Purpose of the Statutory Instrument**

This Statutory Instrument amends the Climate Change Levy (General) Regulations 2001 (SI 2001/838) (“the principal Regulations”) as a consequence of: the introduction of a carbon price floor, which involves the introduction of new carbon price support (CPS) rates of climate change levy (CCL) and fuel duty; the removal of the exemption from 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”); and the change to the reduced rate of CCL to 10 per cent of the main rate for supplies of electricity for those businesses with climate change agreements. All three of these changes come into force on 1 April 2013 although, as explained in paragraph 7.3 below, there is a need to bring part of the instrument into effect on 1 January 2013.

**3. Matters of Special Interest to the Joint Committee on Statutory Instruments**

None.

**4. Legislative Context**

4.1 The European Council Directive 2003/96/EC on restructuring the Community framework for the taxation of energy products and electricity establishes the general arrangements for the taxation of energy products and electricity, including setting minimum tax rates for these products. This directive aims to improve the functioning of the internal market by reducing distortions in competition between energy products. In line with the objectives of the European Union (EU) it encourages more efficient use of energy so as to reduce dependence on imported energy products and limit greenhouse gas emissions. In addition, in the interests of protecting the environment, it authorises EU countries to grant tax advantages to businesses that take specific measures to reduce their emissions.

4.2 In relation to energy products other than oil, the UK complies with this Directive through the CCL, the primary legislation for which is contained in

Schedules 6 to the Finance Act 2000, as amended. Currently CCL levies a charge on supplies of energy products (other than oil) and electricity to businesses and the public sector, but exempts a range of supplies, including supplies of energy products to persons who will use them to generate electricity.

4.3 The carbon price floor will be achieved in part through the removal of this CCL exemption; Schedule 20 to the Finance Act 2011 removes it with effect from 1 April 2013 and introduces CPS rates of CCL. Schedule [x] to the Finance Act 2012 introduces lower CPS rates of CCL for supplies of fossil fuels to CHP generators and to generators with carbon capture and storage (CCS) technology. Section [x] of the Finance Act 2012 removes, with effect from 1 April 2013, the current exemption from CCL for electricity generated by a CHP station and supplied via a utility to a third party where such electricity is generated on or after that date.

4.4 These Regulations amend the principal Regulations as a result of the above changes and to give effect to the CPS rates of CCL.

## **5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

- *What is being done and why*

7.1 In order to encourage new and additional investment in low-carbon power generation, the Government announced at Budget 2011 that it would introduce a carbon price floor with effect from 1 April 2013. Supplies of fossil fuels used in electricity generation will become liable either to CCL or fuel duty from that date, charged at the relevant CPS rate, which is determined by the average carbon content of each fossil fuel. The Government believes a carbon price floor will build upon the EU Emissions Trading System, which to date has not delivered a high and stable enough carbon price to encourage the investment in low-carbon technology the UK needs to meet its legal obligations.

7.2 The changes made by the instrument will allow the Commissioners for HMRC to administer the CPS rates of CCL being introduced from 1 April 2013 as part of the carbon price floor, including reliefs from the CPS rates for supplies of fossil fuels made to CHP stations and to stations with CCS technology.

7.3 The changes made to the principal Regulations will also mean that electricity produced in a CHP on or after 1 April 2013 will no longer be the subject of CHP levy exemption certificates (CHP LECs). However, in order to

facilitate the transition to a non-certification system, regulation 15(b) of the instrument comes into effect on 1 January 2013.

7.4 The objective of removing the CHP indirect supplies exemption and replacing it with a partial relief from the CPS rates for supplies of fossil fuels made to CHP stations is to ensure that Government support for CHP through the tax system is more direct, provides greater certainty over the long term, and offers better value for money for both taxpayers and the operators of CHP stations.

7.5 This instrument also amends the CCL relief formula in Schedule 1 of the principal Regulations to reflect the reduced rate of CCL in respect of a supply of electricity being set at 10 per cent of the main rate from 1 April 2013.

- ***Consolidation***

7.6 There is no present intention to consolidate the amendments that have been made to the principal Regulations.

## **8. Consultation Outcome**

8.1 A consultation on introducing a carbon price floor was released on 16 December 2010 and the Government's response to the consultation published on 30 March 2011. The key points of the response were: the carbon price floor would come into effect on 1 April 2013; the floor would start at £16 per tonne of carbon dioxide and increase to £30 per tonne of carbon dioxide by 2020; there would be a lower rate for supplies of fossil fuels to CHPs; and those generators that install CCS technology would be entitled to a one percentage point reduction in the appropriate CPS rate for every one percentage point of carbon dioxide it captured rather than emitted.

8.2 The draft legislative proposals introducing the partial reliefs from the CPS rates for supplies to CHPs and those generators with CCS technology, and the removal of the CCL CHP indirect supplies exemption, were published for consultation on 6 December 2011.

## **9. Guidance**

9.1 Six public notices covering CCL are available at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

9.2 Guidance was published on 6 December 2011 to accompany the publication of the draft legislation on the carbon price floor. This is also available from the HMRC website.

## **10. Impact**

10.1 Around 150 fossil fuel electricity generators embedded into the National Grid and around 1,000 CHP plants and a large number of small electricity generators will incur the CPS rates upon their fuel input. The total

one-off familiarisation and IT costs and continuing administration burdens for the affected businesses are negligible.

10.2 The impacts in terms of one-off and continuing costs on the CHP sector as a result of the removal of the CHP indirect supplies exemption are also negligible.

10.3 There is no impact on the public sector.

10.4 A Tax Information and Impact Note (TIIN) covering this instrument was published on 6 December 2011 alongside draft clauses of the Finance Bill 2012 and this instrument and 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 firms.

11.3 The basis for the final decision on what action to take to assist small business is described in paragraphs 7.1 to 7.5, so no such action is taken for this general tax provision.

## **12. Monitoring and 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**

Ian Moules at HM Revenue and Customs Tel: 020 7147 0653 or e-mail: [ian.moules@hmrc.gsi.gov.uk](mailto:ian.moules@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

**2013 No. 0000**

**EXCISE**

**The Hydrocarbon Oil Duties (Reliefs for Electricity Generation)  
(Amendment) Regulations 2013**

<i>Made</i> - - - -	<i>February 2013</i>
<i>Laid before Parliament</i>	<i>February 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), (2)(a) to (g) and (h) of the Hydrocarbon Oil Duties Act 1979(a):

**Citation and commencement**

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

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

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

3. In regulation 2 (interpretation), in the definitions of “qualifying oil” and “relevant duty” after “11(1)” insert “, 13ZA”.

4. In regulation 3 (relief)—

- (a) in paragraph (2), omit “paragraph (3) or”; and
- (b) omit paragraph (3).

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(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 Act 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”.

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

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 regulation 6A (“the Carbon Price Support rates”)”.

6. After regulation 6 insert—

“6A. The Carbon Price Support rates are—

- (a) £0.01568 per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 11(1)(a) of the Hydrocarbon Oil Duties Act 1979 (fuel oil);
- (b) £0.01365 per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 11(1)(b) of that Act (gas oil);
- (c) £0.01568 per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 13ZA(a) of that Act (certain heavy oil used for heating etc.);
- (d) £0.01568 per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 14(1) of that Act (light oil for use as furnace fuel); and
- (e) £0.01365 per litre in the case of qualifying bioblend.”.

7. In paragraph (1) of regulation 10 (amount of relief on qualifying oil or bioblend used to produce electricity in a combined heat and power station)—

- (a) after “relates” insert “less the relevant amount specified in regulation 10A (“the CHP Carbon Price Support rates”)”; and
- (b) at the end, after “paid” insert “less the relevant fraction of the relevant CHP Carbon Price Support rate”.

8. After regulation 10 insert —

“10A. The CHP Carbon Price Support rates are—

- (a) £[xx.xx] per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 11(1)(a) of the Hydrocarbon Oil Duties Act 1979 (fuel oil);
- (b) £[xx.xx] per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 11(1)(b) of that Act (gas oil);
- (c) £[xx.xx] per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 13ZA of that Act (certain heavy oil used for heating etc.);
- (d) £[xx.xx] per litre in the case of qualifying oil on whose delivery for home use rebate has been allowed under section 14(1) of that Act (light oil for use as furnace fuel); and
- (e) £[xx.xx] per litre in the case of qualifying bioblend.”.

February 2013

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

*name*

*name*

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

## **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) which introduced a relief from excise duty for rebated oils used to produce electricity.

Regulation 3 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. A consequential amendment is also made to the definition of “qualifying duty”.

Regulation 4 withdraws relief on supplies of electricity to electricity utilities by generators who produce electricity primarily for the producer’s own consumption and generators who are suppliers exempt from requiring a supply licence, aligning the excise rules with those for climate change levy.

Regulations 5 and 7 reduce the amount of relief that is allowed to take account of the Carbon Price Support rates on qualifying oil used to generate electricity in generating stations and combined heat and power stations. The applicable rates are specified in regulations 6 and 8 respectively.

A Tax Information and Impact Note covering this instrument was published on 6th December 2011 alongside draft clauses of the Finance Bill 2012 and this instrument and 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.

**EXPLANATORY MEMORANDUM TO**  
**THE HYDROCARBON OIL DUTIES (RELIEFS FOR ELECTRICITY**  
**GENERATION) (AMENDMENT) REGULATIONS 2013**

**2013 No.**

**1. Introduction**

This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the Statutory Instrument**

This Statutory Instrument, which comes into force on 1 April 2013, amends the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (“the principal Regulations”) which introduced a relief from excise duty for rebated oils used to produce electricity. The purpose of this instrument is to reduce the amount of relief that is currently allowed on oils used to generate electricity in a generating station or combined heat and power (CHP) station so that such oils are subject to carbon price support (CPS) rates of fuel duty from 1 April 2013.

**3. Matters of Special Interest to the Joint Committee on Statutory Instruments**

None.

**4. Legislative Context**

4.1 Council Directive 2003/96/EC is the Community framework for the taxation of energy products and electricity (“the Directive”). Article 14 (1)(a) of the Directive exempts energy products used to produce electricity, and the principal Regulations gives effect to this in respect of oils by granting relief on rebated heavy and light oils used to generate electricity.

4.2 Article 14(1) of the Directive also allows Member States to subject these products to tax for reasons of environmental policy and the UK has decided to take up this option to introduce the carbon price floor from April 2013. The floor will be achieved by taxing fossil fuels used in electricity generation through new CPS rates of climate change levy (CCL) and fuel duty. In relation to the fossil fuels covered by this instrument this is achieved by reducing the amount of relief from excise duty currently available to reflect the CPS rates of fuel duty being introduced from April 2013.

**5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

- *What is being done and why*

7.1 In order to encourage additional investment in low-carbon power generation, the Government announced at Budget 2011 it would introduce a carbon price floor with effect from 1 April 2013. Supplies of fossil fuels used in electricity generation will become liable either to CCL or fuel duty from that date, charged at the relevant CPS rate, which is determined by the average carbon content of each fossil fuel. The Government believes a carbon price floor will build upon the EU Emissions Trading System.

7.2 This instrument amends the existing excise relief for rebated oils used to generate electricity which was introduced with effect from 1 January 2006. The relief was introduced to avoid double taxation and ensure consistency of treatment with other energy products used for the same purpose. In particular, the amount of relief allowed will be reduced, the effect of which will be that oils used to generate electricity in an electricity generating station or CHP station will become subject to CPS rates of fuel duty.

- *Consolidation*

7.3 There is no intention to consolidate.

## **8. Consultation Outcome**

A consultation on the introduction of a carbon price floor was published on 16 December 2010 and the results of the consultation were published on 30 March 2011.

## **9. Guidance**

Public Notice 175, available on [www.hmrc.gov.uk](http://www.hmrc.gov.uk), will be updated to take account of the changes being introduced by this instrument. Guidance was published on 6 December 2011 to accompany the publication of the draft legislation on the carbon price floor. This is also available from the HMRC website.

## **10. Impact**

10.1 Around 40 electricity generators, including CHP stations, who use oil in electricity generation will incur carbon price support rates upon their fuel input. The total one-off familiarisation and IT costs and continuing administration burdens for the affected businesses are negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note (TIIN) covering this instrument was published on 6th December 2011 alongside draft clauses for the Finance Bill 2012 and this instrument and is available on the HMRC website at [www.hmrc.gov.uk/thelibrary/tiins.htm](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**

The legislation applies to small business.

## **12. Monitoring and 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**

Ann Little at HM Revenue and Customs, Tel: 020 7147 0655, e-mail: [Ann.Little@hmrc.gsi.gov.uk](mailto:Ann.Little@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

## **1 Climate change levy: carbon price support rates**

- (1) Schedule 6 to FA 2000 (climate change levy) is amended as follows.
- (2) In paragraph 42A(5) for “£0.01188 per kilogram” substitute “£[ ] per kilojoule”.
- (3) The amendment made by subsection (2) has effect in relation to supplies treated as taking place on or after 1 April 2013.
- (4) In paragraph 42A(5) (as amended by subsection (2)) –
  - (a) for “£0.00091 per kilowatt hour” substitute “£[ ] per kilowatt hour”,
  - (b) for “£0.01460 per kilogram” substitute “£[ ] per kilogram”, and
  - (c) for “£[ ] per kilojoule” substitute “£[ ] per kilojoule”.
- (5) The amendment made by subsection (4)(a) has effect in relation to a supply of gas to a person so far as the gas is actually supplied to the person on or after 1 April 2014.
- (6) The amendments made by subsection (4)(b) and (c) have effect in relation to supplies treated as taking place on or after 1 April 2014.

**EXPLANATORY NOTE**

**CLIMATE CHANGE LEVY: CARBON PRICE SUPPORT RATES**

**SUMMARY**

1. This clause amends Schedule 6 to the Finance Act 2000 (“Schedule 6”) in two ways. First, it changes the taxation base for certain fuels (notably coal and other solid fuels) under the carbon price support rates of climate change levy (CCL) from a weight basis (i.e. per kilogram) to a heat basis (i.e. per kilojoule), with effect from 1 April 2013. Second, it introduces the carbon price support rates for gas, liquefied petroleum gas, and coal and other fuels with effect from 1 April 2014.

**DETAILS OF THE CLAUSE**

2. Sub-section (1) provides for the amendment of Schedule 6.
3. Sub-sections (2) and (3) amend paragraph 42A(5) of Schedule 6 so that the tax basis for “any other taxable commodity (apart from electricity)” is changed from “per kilogram” to “per kilojoule” with effect from 1 April 2013.
4. Sub-sections (4) to (6) amend paragraph 42A(5) of Schedule 6 by introducing revised carbon support rates for gas, liquefied petroleum gas and other taxable commodities (other than electricity) with effect from 1 April 2014.

**BACKGROUND NOTE**

5. In Budget 2011, the Chancellor announced that HM Treasury and HM Revenue and Customs (HMRC) would reform the CCL and fuel duty to provide more certainty and support to the carbon price and to encourage investment in low-carbon electricity. This built on the commitments made in the Coalition’s programme for government,<sup>1</sup> to:
  - introduce a floor price for carbon;
  - increase the proportion of tax revenues from environmental taxes; and
  - make the tax system more competitive, simpler, fairer and greener.

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<sup>1</sup> *The Coalition: our programme for government*, HM Government, 20 May 2010.

## FINANCE BILL

6. Legislation to implement this policy was included in Finance Bill 2011, and was enacted as section 78 of, and Schedule 20 to, the Finance Act 2011. At Budget 2011, the Chancellor also announced that carbon price support rates would be announced two years in advance, and that HM Treasury and HMRC would continue to consult business about the implementation of the carbon price support rates.
7. The Government will announce the carbon price support rates for the year 1 April 2014 to 31 March 2015 at Budget 2012. As a result of representations from UK coal mining businesses and a range of electricity generators, the Government has decided to change the tax base for solid fuels under the carbon price floor from a weight basis to a heat basis.
8. Oils are not subject to CCL but fuel duty is payable at a rebated rate at the point the oil leaves the refinery. The carbon price support rates for oil for the year 1 April 2014 to 31 March 2015 will also be announced at Budget 2012 and set out in secondary legislation.
9. If you have any questions about this change, or comments on the draft legislation, please contact Ian Moules on 020 7147 0653 (email: [ian.moules@hmrc.gsi.gov.uk](mailto:ian.moules@hmrc.gsi.gov.uk)).