

2013 No. 713

CLIMATE CHANGE LEVY

**The Climate Change Levy (General) (Amendment) Regulations
2013**

<i>Made</i>	- - - -	<i>26th March 2013</i>
<i>Laid before the House of Commons</i>		<i>26th March 2013</i>
<i>Coming into force</i>	- -	<i>1st April 2013</i>

The Commissioners for Her Majesty's Revenue and Customs^(a) make the following Regulations in exercise of the powers conferred by paragraphs 22, 23(4), 24B(3), 24D, 44(3) and (4), 62(1)(ba), (bb) and (bc) and 146 of Schedule 6 to the Finance Act 2000^(b):

Citation and commencement

1. These Regulations may be cited as the Climate Change Levy (General) (Amendment) Regulations 2013 and come into force on 1st April 2013.

Amendments to the Climate Change Levy (General) Regulations 2001

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

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

(a) in paragraph (1), after sub-paragraph (b), insert —

“(ba) a quantity of a carbon price support rate commodity is the subject of a deemed supply under paragraph 24A or 24B^(d) of the Act but afterwards the quantity—

(i) is not used as mentioned in paragraph 24A(1)(b) or 24B(1)(b) of the Act (as the case may be), and

(ii) is removed from the site at which the station is situated or from the CHPQA site of the station (as the case may be);

(bb) after—

(a) The regulations made under the powers cited are to be made by the Commissioners; paragraph 147 of Schedule 6 to the Finance Act 2000 (c.17) 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) 2000 c. 17; paragraphs 24B, 24D, and 62(1)(ba), (bb) and (bc) were added by a resolution passed by the House of Commons on 25th March 2013 under section 1 of the Provisional Collection of Taxes Act 1968 (c.2). This resolution has statutory effect but will cease to have effect once provisions corresponding to those in the resolution are enacted in the Finance Act 2013. In any case it will cease to have effect at the end of seven months after the date on which it is expressed to take effect or, if no such date is expressed, after the date on which it is passed. Relevant amendments to section 1 were made by section 60 of the Finance Act 1968 (c.44), section 205(5) of the Finance Act 1993 (c. 34), paragraph 1 of Schedule 7 to the Finance Act 2000 (c. 17). Paragraph 146 has been amended by section 188(2)(c) of the Finance Act 2003 and S.I. 2009/571, Schedule 1, paragraph 20(1) and (7).

(c) S.I. 2001/838; relevant amending instruments are S.I. 2003/604, 2005/1716, 2007/2903, 2011/684.

(d) Paragraphs 24A and 24B were inserted by the resolution referred to in footnote (b) above.

- (i) a determination is made under Schedule 3 to these Regulations that a quantity, or a proportion of a quantity, of a carbon price support rate commodity is referable to the production of electricity, and
 - (ii) it is accordingly determined that the quantity or proportion of a quantity is a subject of a deemed supply under paragraph 24B of the Act,

it is determined that the quantity or proportion of a quantity was not referable to the production of electricity;
 - (bc) after an amount is determined to be payable by way of CCL on a deemed supply under paragraph 24A or 24B of the Act, it is determined that that amount is too high;”;
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (a) after “(b)” insert “(bc)”;
 - (ii) at the end of sub-paragraph (a) omit “and”;
 - (iii) after sub-paragraph (a) insert—
 - “(aa) in relation to a case described by sub-paragraph (ba) of paragraph (1), the amount of CCL charged and paid on the deemed supply;
 - (ab) in relation to a case described by sub-paragraph (bb) of paragraph (1), the amount of CCL charged and paid on the quantity or proportion of a quantity of the commodity that has been determined as not referable to the production of electricity; and”;
 - (c) after paragraph (2) insert—

“(3) In sub-paragraph (ba) of paragraph (1) “CHPQA site” has the meaning given in paragraph 24B(7) of the Act.”.
4. After regulation 40 (supplies to producers of commodities) insert—
- “**40A.** A quantity of a commodity is not to be the subject of a deemed supply under paragraph 24A of the Act (deemed taxable supplies of commodities to be used in producing electricity) so far as it is the subject of a taxable supply as provided for by regulation 40(2) in its application for the purposes of paragraph 14(1) of the Act.”.
5. In paragraph (1) of regulation 51A (interpretation of part 4A)—
- (a) for “Schedules 1 and 2” substitute “Schedules 1 to 3; and
 - (b) for the definition of “CHPQA” substitute—

““ CHPQA” refers to the Combined Heat and Power Quality Assurance Standard, Issue 3, January 2009 originally published by the Department for Environment, Food and Rural Affairs (the “CHPQA Standard”) (including the later of version Final 1.0, 2.0 or 3.0 of CHPQA Guidance Notes 0 to 4 (including 2(S), 3(S), 4(S), 10 to 28 and 30);”.
6. In regulation 51G (CCL treatment dependent on certification)—
- (a) in sub-paragraph (1)(b) for “, 17(3) and 17(4)” substitute “and 17(1A)”(a);
 - (b) omit sub-paragraph (2)(c);
 - (c) in sub-paragraph 2(d) for “17(3) or 17(4)” substitute “17(1A)”.
7. In regulation 51H (CCL treatment dependent on certification)—
- (a) in sub-paragraph (1)(b) for “, 17(3) or 17(4)” substitute “or 17(1A)”;
 - (b) omit sub-paragraph (1)(c).
8. In Part 4A (combined heat and power stations), after regulation 51M insert—

(a) Paragraph 17(1A) was inserted by the resolution referred to in footnote (b) on page 1.

“Input fuels referable to the production of electricity in combined heat and power stations

51N. Schedule 3 has effect for the purpose of determining the extent to which a quantity of a carbon price support rate commodity is referable to the production of electricity in a combined heat and power station.”.

9. In regulation 52 (self-supply of electricity by producer)—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (a) omit “or”;

(ii) at the end of sub-paragraph (b) for the full-stop substitute “; or”; and

(iii) after sub-paragraph (b) insert—

“(c) it is produced from a taxable commodity (other than electricity) which was not the subject of a deemed supply under paragraph 24A, 24B, 24C or 24D of the Act.”;

(b) after paragraph (3) insert—

“(4) For the purposes of paragraph (1)(c), a commodity shall be treated as having been the subject of a deemed supply if it would have been the subject of such a supply had the reference in paragraph 24A(1)(a) or, as the case may be, 24B(1)(a) of the Act to Great Britain been a reference to the United Kingdom instead.”.

10. In paragraph (1) of regulation 60 (penalties) after sub-paragraph “(hb)” insert—

“(hc) paragraph 3 of Schedule 3;”.

11. In paragraph 2 of Schedule 1 (certification and payment of CCL in the case of excluded, exempt and other supplies)—

(a) in the formula, for “0.65R” substitute “(r x R)”;

(b) after the definition of “M”, insert—

“r = 0.90 in the case of electricity, and in any other case 0.65.”;

(c) for “0.65R = 65% of”, substitute “R =”.

12. In paragraph 2 of Schedule 2 (the CHP relief condition)—

(a) in sub-paragraph (b), for “, 17(3) or 17(4)” substitute “17(1A)”;

(b) omit sub-paragraph (c).

13. After Schedule 2 insert—

“SCHEDULE 3

Regulation 51N

**FUELS REFERABLE TO THE PRODUCTION OF
ELECTRICITY IN A COMBINED HEAT AND POWER
STATION**

Interpretation

1. In this Schedule—

“Annual Operation” means a period commencing on 1st January and finishing on 31st December;

“CHPQA certificate” has the same meaning as in the Climate Change Levy (Combined Heat and Power Stations) Exemption Certificate Regulations 2001(a);

(a) S.I. 2001/486.

“CHP Qualifying Heat Output” “CHP scheme” and “CHP Total Fuel Input” have the meaning given in section 4 of the CHPQA;

Calculation of fuels referable to the production of electricity

2.—(1) The extent to which a quantity of a carbon price support rate commodity is referable to the production of electricity in a combined heat and power station is to be determined in accordance with sub-paragraphs (2) to (4).

(2) Calculate the total quantity of input fuels referable to the production of electricity in accordance with the following formula —

$$TFI - \frac{QHO}{\eta_{h,ref}}$$

Where—

TFI is the CHP Total Fuel Input for the station specified on the current CHPQA certificate relating to the station at the time the quantity of the carbon price support rate commodity is brought onto, or arrives at, the CHPQA site.

QHO is the CHP Qualifying Heat Output for the station specified on the current CHPQA certificate relating to the station at the time the quantity of the carbon price support rate commodity is brought onto, or arrives at, the CHPQA site.

$\eta_{h,ref}$ is the reference boiler heat efficiency, taken here to be 81%.

(3) Calculate the percentage of input fuels referable to the production of electricity in accordance with the following formula—

$$\frac{Q}{TFI} \times 100$$

Where—

Q is the quantity of input fuels referable to the production of electricity calculated in accordance with sub-paragraph (2).

TFI is the CHP Total Fuel Input for the station specified on the current CHPQA certificate relating to the station at the time the quantity of the carbon price support rate commodity is brought onto, or arrives at, the CHPQA site.

(4) Apply the percentage calculated in accordance with sub-paragraph (3) to the quantity of carbon price support rate commodities brought onto, or arriving at, the CHPQA site.

Compulsory review of calculation

3.—(1) This paragraph applies where a person (“P”)—

- (a) has accounted for CCL on a deemed supply under paragraph 24B of the Act; and
- (b) the quantity of the carbon price support rate commodity that was the subject of the deemed supply has been calculated in accordance with paragraph 2 of this Schedule.

(2) Where this paragraph applies P must review the correctness of that quantity—

- (a) in accordance with paragraphs 4 and 5; and
- (b) no later than a reconciliation day.

4.—(1) That correctness must be reviewed in relation to the CHP Total Fuel Input and the CHP Qualifying Heat Output for the relevant reconciliation span.

(2) In the case of a reconciliation span for an incompleting calendar year, treat the actual CHP Total Fuel Input and the CHP Qualifying Heat Output as determined for the 12 month period preceding the relevant reconciliation day and as if that period was an Annual Operation.

(3) For the purposes of paragraph 3(2) and this paragraph—

- (i) paragraph 9B of Schedule 1 to these Regulations has effect for the purposes of determining a reconciliation day and reconciliation span; and
- (ii) “incompleted calendar year” has the meaning given in that paragraph.

5. The review must properly take into account—

- (a) the quantities of carbon price support rate commodities that were the subject of deemed supplies; and
- (b) the quantities that ought to have been the subject of deemed supplies having regard to the actual CHP Total Fuel Input and CHP Qualifying Heat Output for the station in question for the reconciliation span in which the commodities were supplied.

6. If the review determines that the quantities of carbon price support rate commodities that were the subject of deemed supplies was too little paragraphs 24C and 38A(2)(a) of the Act apply accordingly.

7. If the review determines that the quantities of carbon price support rate commodities that were the subject of deemed supplies was too much P is entitled to a tax credit under Part II of these Regulations.”.

*Nick Lodge
Ruth Owen*

26th 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, which come into force on 1st April 2013, amend the Climate Change Levy (General) Regulations 2001 (“the General Regulations”) (S.I. 2001/838) and are made following the introduction of carbon price support (CPS) rates of climate change levy (CCL) (“CPS rates”).

Paragraphs 24A and 24B of schedule 6 to the Finance Act 2000 (c. 17) (“the Act”) provide for deemed taxable self-supplies where fossil fuels (other than oil) are delivered to a generating station to be used in producing electricity in the station or are delivered to a combined heat and power (CHP) station and are referable to the production of electricity in the station. Paragraph 42A of the Act provides that these deemed supplies are subject to CPS rates.

Regulation 3 of this instrument amends regulation 11 of the General Regulations to entitle a registrable person who has overpaid the CPS rate of CCL on a deemed supply to reclaim the overpayment.

Regulation 4 inserts new regulation 40A to provide that a quantity of a commodity is not to be the subject of a deemed supply under paragraph 24A of the Act if, by virtue of regulation 40(2), it is the subject of a taxable supply.

Regulation 5 amends regulation 51A of the General Regulations so that it applies to new Schedule 3 and updates the definition of “CHPQA” so that it refers to the latest version of the Standard.

Regulations 6, 7 and 12 make consequential amendments to regulations 51G and 51H of, and paragraph 2 of Schedule 2 to, the General Regulations following amendments made to paragraph 17 of the Act (exemption: self supplies by electricity producers).

(a) Paragraphs 24C and 38A were inserted by the resolution referred to in footnote (b) on page 1.

Regulation 8 inserts new regulation 51N which introduces new Schedule 3 to the General Regulations.

Regulation 9 amends regulation 52 of the General Regulations to provide that, for the purposes of paragraph 23(3)(b)(ii) of the Act (deemed self-supply of electricity produced from taxable commodities) electricity is not to be treated as produced from taxable commodities if those commodities (other than electricity) have not been the subject of a deemed taxable supply under paragraph 24A, 24B, 24C or 24D of the Act.

Regulation 10 amends regulation 60 of the General Regulations to impose a civil penalty for failing to carry out a review required under new Schedule 3 of the correctness of the quantity of fossil fuels that is referable to the production of electricity in a CHP station.

Regulation 11 amends the CCL relief formula in paragraph 2 of Schedule 1 to the General Regulations as a consequence of the change to the rate of reduced-rates supplies of electricity (but not for reduced rate supplies of other taxable commodities).

Regulation 13 inserts new Schedule 3 which sets out the calculation for determining the extent to which a quantity of fossil fuels (other than oil) delivered to a CHP station is referable to the production of electricity in the station. It also sets out a compulsory review procedure and makes provision for tax credits and further deemed supplies in cases where the quantity determined in accordance with the calculation is subsequently found to be too much or too little.

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>.

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STATUTORY INSTRUMENTS

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