EXPLANATORY MEMORANDUM TO

THE BOILER (EFFICIENCY) (AMENDMENT) REGULATIONS 2006

2006 No. 170

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These Regulations implement Article 16 of the EC Directive on the promotion of cogeneration based on a useful heat demand in the internal energy market. They have the effect of exempting micro-cogeneration from the requirements of the Boiler (Efficiency) Regulations 1993 (S.I. 1993/3083 as amended by S.I.1994/3083).

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

3.1 None

4. Legislative Background

4.1 The Regulations are made under section 2(2) of the European Communities Act 1972. They implement Article 16 of Directive 2004/8/EC of the European Parliament and of the Council, on the promotion of cogeneration based on a useful heat demand in the EU internal energy market.

4.2 Article 16 amended Article 3(1) of Council Directive 92/42/EEC on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (hereafter called the Boiler Efficiency Directive) as last amended by Directive 93/68/EEC.

4.3 The Boiler (Efficiency) Regulations 1993 (S.I. 1993/3083) and the Boiler (Efficiency) (Amendment) Regulations 1994 (S.I. 1994/3083) implement in the UK the requirements of the Boiler Efficiency Directive. Part 1 of Schedule 3 to the Boiler (Efficiency) Regulations 1993 sets out the boilers and appliances to which those Regulations do not apply.

4.4 The effect of the amendment made by these Regulations is to exempt cogeneration units, also known as Combined Heat and Power (CHP) units, from the requirements of the Boiler (Efficiency) Regulations 1993. The cogeneration units so exempt are those with an electrical output of up to 400kW but the amendment is most likely to affect micro-cogeneration units. These are units with an electrical output below 50kW, they are also known as micro Combined Heat and Power (microCHP) units.

4.5 The Directive on the promotion of cogeneration came into force on 21st February 2004 and the UK is required to transpose the Directive by 21st February 2006. The transposition note for the Directive is attached to this memorandum.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The overall objective of the Cogeneration Directive is to increase energy efficiency and improve security of supply in the EU by creating a framework for the development of high efficiency cogeneration. High efficiency cogeneration may give primary energy savings compared to the separate generation of heat and electricity. The Directive sets criteria to define high efficiency cogeneration, and makes provision for public support and to ensure fair access to markets for electricity from cogeneration.

7.2 Article 16 of the Directive exempts cogeneration from the efficiency provisions of the Boiler Efficiency Directive (92/42/EEC), which is implemented in the UK by the Boiler (Efficiency) Regulations 1993 (S.I. 1993/3083 as amended by S.I.1994/3083).

7.3 The problem the Boiler Efficiency Directive (92/42/EEC) presents for cogeneration is that it sets minimum thermal (heat) efficiency thresholds that are unable to take account of or offset any electrical output that might be produced from a cogeneration unit. The effect of this is that although cogeneration units may be capable of providing primary energy savings when their heat and electrical output is taken into account, the thermal output alone from some types of units may not meet the thermal efficiency thresholds set by the Directive. This amendment is therefore necessary to allow the continuing development of cogeneration, particularly micro-cogeneration.

7.4 A public consultation was held on the UK's negotiating position on the Commission's initial proposal for the Cogeneration Directive, closing in December 2002. A majority of the respondents stated that they favoured the principle of a European Directive for promoting CHP but they had reservations about the initial draft of the proposal. Several respondents expressed real concerns that, if adopted without amendment, the proposed Directive could damage the CHP sector in the UK. Most of the respondents' concerns have been satisfactorily addressed in the agreed text of the Directive. Article 16 was not an area where concerns were raised.

7.5 A separate consultation on the transposition of Article 5 of the Cogeneration Directive, concerning the guarantee of origin of electricity from high efficiency cogeneration, will be held in February 2006.

8. Impact

8.1 A Regulatory Impact Assessment has not been produced specifically for the implementation of Article 16 but one has been produced in respect of the Cogeneration Directive. In that assessment, the effects of the amendment made by these Regulations are stated to be beneficial.

9. Contact

Pete Gorman at the Department for Environment Food and Rural Affairs Tel: 0207 082 8722 or e-mail: pete.gorman @defra.gsi.gov.uk can answer any queries regarding the instrument.

Defra
Sustainable Energy Policy Division
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DIRECTIVE 2004/8/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROMOTION OF COGENERATION BASED ON A USEFUL HEAT DEMAND IN THE INTERNAL ENERGY MARKET AND AMENDING DIRECTIVE 92/42/EEC

Introduction

The Cogeneration Directive entered into force on 21 February 2004. Member States have until 21 February 2006 to transpose its requirements into national law.

The following table indicates how it is proposed to transpose the Directive in the UK. The Scottish Executive and Northern Ireland Departments have responsibility for transposition within their own jurisdictions. The Scottish Executive will be included under this transposition. Northern Ireland will follow similar approaches but produce their own regulations.

Article	Purpose	Implementation	Responsibility
1	**Purpose** - is to create a framework for the promotion and development of high efficiency cogeneration.	No action required	
2	**Scope** - states that the Directive shall apply to cogeneration as defined in Article 3 and cogeneration technologies listed in Annex I.	No action required	

Article	Purpose	Implementation	Responsibility
3	**Definitions** – this article defines certain key terms	No legislative action The Finance Act 2000 is the legislative basis of the Climate Change Levy. Schedule 6 to the Act contains definitions of combined heat and power. As the UK will be using Article 12.2, it can use its own definition of CHP. This is contained within the Combined Heat and Power Quality Assurance programme (CHPQA). The CHPQA will need to be reviewed in light of the harmonised reference values once they are agreed by Member States – expected February 2006).	**Department for Environment, Food and Rural Affairs (Defra).**
4	**Efficiency criteria of cogeneration** – requires the Commission to establish through comitology, harmonised efficiency reference values for the separate production of electricity and heat by 21 February 2006.	Possibly no legislative action required. Action is with the Commission but the UK will need to negotiate for reference values that do not disadvantage the UK CHP industry. Agreement on the reference values is expected in February 2006.	**Defra**
5	**Guarantee of origin of electricity from high efficiency cogeneration** – requires Member States to ensure that the origin of electricity produced from high efficiency CHP can be guaranteed in response to a request from the producer.	**Legislation required** Implement through new regulations made under Section 2(2) of the European Communities Act 1972. Contractor to administer this under the CHPQA programme.	**Defra**
6	**National potentials for high efficiency cogeneration** – requires Member States to publish reports analysing the national potential for high efficiency CHP and barriers to its realisation.	No legislative action required. Administrative action only. The proposed analysis is broadly in line with that currently carried out by the Government under the UK wide CHPQA.	**Defra**

Article	Purpose	Implementation	Responsibility
7	**Support schemes** – requires Member States' support schemes to be based on useful heat demand and primary energy savings.	**Legislation possibly required.** **The UK's current support measures already use the principles in the Directive. Many base eligibility for support on the CHPQA, which will be changed to take account of the harmonised efficiency reference values** Once the new reference values are agreed, the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005 [SI 2005 No. 1714] **may** need to be amended to update the threshold efficiency percentage used in the CHPQA programme. The Regulations were made under powers conferred by the Finance Act 2000.	**Defra**
8	**Electricity grid system and tariff issues** – requires Member States to ensure that electricity network system operators guarantee access to electricity produced from CHP	No legislative action required This Article references the Directive on the "Promotion of electricity produced from renewable energy sources in the internal electricity market" [the Renewables Directive 2001/77/EC] and the Directive on "Common Rules for the Internal Market in Electricity" [2003/54/EC].	**Department of Trade and Industry (Dti)**
9	**Administrative procedures** – requires Member States to evaluate the existing legislative and regulatory framework with regard to authorisation procedures or the other procedures laid down in Article 6 of Directive 2003/54/EC, which are applicable to high efficiency cogeneration units.	No legislative action required It is the doing of the evaluation that will make the UK compliant.	**Dti**

Article	Purpose	Implementation	Responsibility
10	**Member States reporting** – requires Member States to publish reports of the results of evaluations and analysis carried out in accordance with other Articles in the Directive.	No legislative action - administrative action only.	**Defra**
11	**Commission reporting** – requires the Commission to report every four years on the implementation of the Directive.	No action required	
12	**Alternative calculations** – this article includes two derogations until 2010 allowing Member States to use alternative methodologies. Article 12.2 (not time limited) allows Member States to use an alternative method for calculating primary energy savings and therefore the eligibility of public support.	No legislative action required – administrative action only. UK will use Article 12.2 to determine primary energy savings re the CHPQA system UK will need to amend the CHPQA scheme to account for the forthcoming harmomised efficiency reference values which will need to be inserted into the Quality Index formula.	**Defra**
13	**Review** – requires the threshold values to be adapted to technical progress in accordance with comitology procedure	No action required	
14	**Committee Procedure** – about comitolgy	No action required	
15	**Transposition** – requires Member States to transpose the Directive into national law by 21 February 2006 and inform the Commission.	No action required	

Article	Purpose	Implementation	Responsibility
16	**Amendment to Directive 92/42/EEC** – has the effect of exempting micro-cogeneration from the requirements of the Boiler Efficiency Directive (92/42/EEC).	**Legislative action required** Will be a need to amend Part 1 of Schedule 3 to the Boiler Efficiency Regulation 1993 Energy Conservation [SI 1993 No.3083). This regulation, made under Section 2(2) of the European Communities Act 1972 transposed the Boiler Efficiency Directive into the UK.	**Defra**
17	**Entry into force** – Directive entered into force on 21 February 2004.	No action required	
18	**Addressees**	No action required	