EXPLANATORY MEMORANDUM TO

THE CLIMATE CHANGE AGREEMENTS (ELIGIBLE FACILITIES) REGULATIONS 2006

2006 No. 60

1 This explanatory memorandum is prepared by the Department for Environment Food and Rural Affairs and is laid before the House of Commons by Command of Her Majesty. This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

This instrument applies only to those installations identified in the Climate Change Agreements (Energy-Intensive Installations) Regulations 2006 S.I. 2006/59. This instrument defines the conditions to be satisfied by those installations in order to be taken as facilities that are to be or are to continue to be identified a climate change agreement (CCA) with the Secretary of State for the Environment Food and Rural Affairs. Facilities that are certified by the Secretary of State as being covered by a CCA are entitled to claim the reduced rate of Climate Change Levy (CCL) [1].

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

3.1 It is not possible for this instrument to comply with the "21 day rule". The reasons for this are set out in the following paragraphs.

3.2 The enabling powers require two sets of regulations in order to fully provide for facilities within new sectors to be eligible to enter into CCAs and claim the reduced rate of the CCL (see paragraph 4.5 below). The Climate Change Agreements (Energy-Intensive Installations) Regulations 2006 S.I 2006/59 (the Treasury instrument) introduce the new sectors by reference to descriptions of installations within the sectors. This instrument (the Defra instrument) prescribes the conditions relating to energy intensity that must be satisfied by those installations and the sites upon which they are located in order to be eligible to be covered by a CCA. The two instruments must come into force on the same day in order to provide the complete regulatory framework and, in particular, to narrow down the range of premises that might otherwise be eligible to enter into a CCA and claim the reduced rate of CCL if only the Treasury instrument were in force.

3.3 The Treasury instrument, which was subject to the affirmative procedure, was made on 18 January 2006. It is expressed to come into force three days after the day it is made i.e. 21 January 2006.

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[1] An 80% reduced rate applies to facilities that are certified by the Secretary of State as being covered by a CCA.

3.4 As the Defra instrument contains a reference to the Treasury instrument (the Defra instrument defines "installation" by reference to the Treasury instrument), it could only be made after the Treasury instrument had been made. Accordingly, the Defra instrument was made on 18 January 2006.

3.5 If the Defra instrument were to comply with the 21 day rule, this would leave a significant gap between the Treasury instrument coming into force and the Defra instrument coming into force. This would create difficulties since, as set out in paragraph 3.2 above, the two sets of regulations go "hand-in-hand" in order to fully provide for the new sectors to be eligible to enter into CCAs and claim the reduced rate of CCL.

3.6 The alternative means of complying with the 21 day rule would have been to delay the coming into force date of the Treasury instrument by at least 21 days. However, both Defra and Treasury administrators consider that further delay would be unacceptable to the business sectors affected by the new regulations and likely to generate complaint. There has been considerable complaint already about the delay in introducing new regulations. The delay was caused primarily by difficulties in obtaining state aid approval, which took over a year due a series of questions from the European Commission. Approval was finally granted on 6 October 2005. In addition, there were complicated legal drafting issues in connection with the Treasury instrument that only became apparent after state aid approval was granted. Avoiding further delay not only minimises the risk of further complaint, but more importantly, its ensures that new CCAs can be concluded and environmental benefits can be delivered as soon as possible. In the circumstances, Defra considers that it is justifiable for the instrument to breach the 21 day rule.

4. Legislative background

4.1 The Finance Act 2000 (c.17) Schedule 6 has, since 1 April 2001, charged CCL on supplies of electricity, gas and solid fuels for business use.

4.2 Paragraphs 42 and 44 to 51 of that Schedule enable supplies to an energy-intensive facility to carry only 20% of the CCL rates. The facility must be identified in a CCA with the Secretary of State for the Environment, Food and Rural Affairs. CCAs set targets for improvements in energy efficiency or emissions, and performance is monitored regularly. CCAs therefore assist energy-intensive businesses exposed to international competition, but also oblige them to improve their energy efficiency or reduce their emissions in return for the reduced CCL rates.

4.3 Under paragraphs 50 and 51 of that Schedule, CCA eligibility is based upon criteria set out in Part A of Schedule 1 Part 3 to the Pollution Prevention and Control (England and Wales) Regulations 2000 (S.I. 2000/1973).

4.4 However, not all energy intensive premises are covered by that criteria and this has led to some distortions and inequalities that the Treasury instrument and the Defra instrument will help address. The Treasury instrument widens

CCA eligibility to include installations for industrial gases, kaolinitic clay, filler & whitener, heat-treating metals, horticulture, textiles and plastic film. The Defra instrument prescribes the conditions relating to energy intensity that must be satisfied in order for such premises to be taken as a facility eligible to be covered by a CCA.

4.5 This approach is necessary because of the way the powers are set out in Schedule 6 to the Finance Act 2000. Under paragraph 52 of the Schedule, the Treasury can make regulations setting out the relevant installations. However, the power to enter into CCAs is in respect of facilities (i.e. combinations of installations and the sites upon which they are located) and the power to make regulations defining a facility belongs to the Secretary of State. Thus, two sets of regulations coming into force on the same day are needed to fully provide for the new sectors to be eligible to enter into CCAs and claim the reduced rate of CCL.

4.6 The scheme as a whole takes advantage of the frameworks in Articles 5 and 17 of Council Directive 2003/96/EC (taxation of energy products and electricity) (OJ No L 283, 31.10.03, p 51) (differentiated rates above the minimum levels, and other reductions for energy-intensive businesses).

4.7 The Directive was:

- Cleared by the House of Lords – 9 December 2002.
- Debated in Standing Committee B, House of Commons – 27 October 1999.
- Cleared by the House of Commons – 27 November 2002.

5. Extent

This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 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 CCL and CCAs are an important part of the UK's Climate Change Programme to meet the UK's commitments under the Kyoto Protocol. The Protocol aims to reduce emissions of six greenhouse gases from developed countries between 2008 and 2012 by at least 5% below 1990 levels. The European Union and its member States agreed to a burden-sharing agreement of an 8% reduction in greenhouse gas emissions by 2012. As part of this agreement, the United Kingdom has taken on a reduction of 12.5%.

7.2 The CCAs have been very successful in improving energy efficiency in the existing sectors. In aggregate they have beaten their targets by the equivalent of 1 million tonnes of carbon (MtC) a year in the first target period (to 2002)

and by 1.4 MtC a year in the second target period (to 2004). The new sectors have taken on targets to improve their energy efficiency by between 8 and 15 % in the remaining five years of the agreements' life. So, as well as removing some of the competitive distortions referred to above, there is a sound environmental rationale for extending the agreements to other energy-intensive sectors exposed to international competition.

7.3 The level of public interest will be mainly restricted to the business sectors for which the new eligibility criteria are relevant, suppliers who will provide them with energy at the reduced CCL rates, and business associations such as the Confederation of British Industry (who argued for, and welcomed, the widening of eligibility).

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is absorbed within existing practices and there is no overall net cost to the Exchequer.

9. Contact

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