# EXPLANATORY MEMORANDUM TO

# THE CLIMATE CHANGE LEVY (GENERAL) (AMENDMENT) REGULATIONS 2012

## 2012 No. 943

**1.** This explanatory memorandum has been prepared by HM Revenue & Customs 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. Purpose of the instrument

This instrument amends the Climate Change Levy (General) Regulations 2001 (SI 2001/838) ("the principal Regulations") as a consequence of the repeal of the climate change levy (CCL) exemption for taxable commodities supplied for use in certain metal recycling processes ("the recycling exemption") and the introduction of a 20 per cent lower rate for taxable commodities supplied for use in steel and aluminium recycling processes ("the recycling lower rate"). The instrument also corrects an error identified in the principal Regulations relating to the time limit for making repayments. All of these changes come into force on 1 April 2012.

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

The Government announced on 6 December 2011 that the new lower rate would be introduced on 1 April 2012. This instrument is required to administer the lower rate and it is therefore necessary to bring it into force from that date. It has therefore been necessary to breach the "21 day rule". This is because the power to make some of the amendments made by the instrument is provided in a Budget resolution. This resolution has statutory effect under section 1 of the Provisional Collection of Taxes Act 1968 (c. 2). It was not possible to make and lay the instrument until this resolution had been passed by the House of Commons on 26 March.

## 4. Legislative context

4.1 The primary legislation relating to CCL is in Schedule 6 to the Finance Act 2000 ("Schedule 6"). The recycling exemption is contained in paragraph 18A of Schedule 6. The exemption was suspended on 1 April 2011 by SI 2011/1023. Schedule 29 to the Finance Bill 2012, which has effect from 1 April 2012 by means of a resolution under the Provisional Collection of Taxes

Act 1968, repeals paragraph 18A of Schedule 6 and introduces the recycling lower rate.

4.2 Paragraph 64 of Schedule 6 limits the length of time during which HM Revenue and Customs (HMRC) is liable to repay any amount of levy overpaid. Section 99 of, and paragraph 33 of Schedule 51 to, the Finance Act 2009 amended the time limit from three to four years with effect from 1 April 2010. Paragraph 9(5) of Schedule 1 to the principal Regulations makes a reference to paragraph 64 but mis-describes what the current time limit is in that paragraph.

4.3 The principal Regulations determine, among other things, the extent to which supplies can be relieved from CCL and contain the arrangements for administering CCL reliefs, including repaying amounts of overpaid levy. This instrument amends the principal Regulations to give effect to the new recycling lower rate and to correct the reference in paragraph 9(5) of Schedule 1 to the time limit for making repayments.

## 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 The CCL was introduced on 1 April 2001. It is a tax on certain energy products (known as taxable commodities[1]) when supplied for use as fuels. The levy provides for a number of reliefs for a variety of policy reasons.

7.2 One relief, the recycling exemption, was a State aid originally approved by the European Commission until 31 March 2011. In 2010 the Government began the process of seeking re-approval but the approval was not received by the time the original approval expired. From 1 April 2011, therefore, the exemption was suspended while the Commission continued to consider the case for re-approval. This meant that, from this date, steel and aluminium recyclers had to pay the full rates of levy on taxable supplies used in their processes, unless they were eligible to pay the 35 per cent CCL reduced rate as a participant in the climate change agreement scheme.

7.3 In 2008 the Commission changed the basis on which it assessed State aid notifications and concluded in 2011 that re-approval of the full recycling exemption was not justified under these revised guidelines. In October 2011

[1] The taxable commodities are electricity, natural gas, liquid petroleum gas and solid fuels.

the Commission indicated it could approve a lower rate for supplies for use in steel and aluminium recycling processes, provided the level was set at least at 20 per cent of the main rates. The Government agreed to introduce the recycling lower rate from 1 April 2012 and State aid approval was given in November 2011. The scope of the relief, the conditions for it and the method of administration will all be identical to that which existed under the recycling exemption.

7.4 The amendment relating to the time limit for making repayments is necessary to correct an omission in the principal Regulations when changes to time limits were made to primary and secondary legislation in 2010.

## 8. Consultation outcome

8.1 The representative bodies for aluminium and steel recyclers were consulted and kept informed throughout the process of seeking State aid approval and introducing the new recycling lower rate.

8.2 The amendment to the reference to the time limit for making repayments is a technical correction that has no effect on taxpayers because the provision in the primary legislation that has legal effect is correct.

8.3 In line with the Government's framework for making tax policy a draft of this instrument was published for consultation on 31 January 2012.

## 9. Guidance

The details of the introduction of the recycling lower rate were explained in a Tax Information and Impact Note published on 6 December 2012. Six public notices covering CCL are available at www.hmrc.gov.uk.

## 10. Impact

10.1 The impact on the business sector will be negligible.

10.2 There will be no impact on the public sector, charities or voluntary bodies.

10.3 A Tax Information and Impact Note covering this instrument was published on 6 December 2011 alongside a draft of the Finance Bill 2012 which contains the primary provisions relating to the recycling lower rate. It is available on the HMRC website at ttp://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 eligible steel and aluminium recyclers.

11.3 The representative bodies for the sectors concerned have been consulted throughout this process and the administration of the lower rate relief will operate in the same way as for the previous exemption. All businesses will pay the same rate of CCL.

## 12. Monitoring & 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

Andy Jameson at HMRC Tel: 020 7147 2379 or email: andy.jameson@hmrc.gsi.gov.uk can answer any queries regarding the instrument.