# EXPLANATORY MEMORANDUM TO

# THE CLIMATE CHANGE LEVY (SUSPENSION OF RECYCLING EXEMPTION) ORDER 2011

## 2011 No. 1023

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

## 2. Purpose of the instrument

2.1 This instrument suspends the exemption from the climate change levy in respect of taxable commodities supplied for use in aluminium and steel recycling.

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

3.1 This Order has been made in exercise of a power contained in a House of Commons resolution passed on 29 March 2011, which has temporary statutory effect by virtue of section 1 of the Provisional Collection of Taxes Act 1968. Provisions corresponding to those in the resolution appear in clause 80 in the Finance (No. 3) Bill 2011 published on 31 March, and, provided the clause is not rejected during the passage of the Bill through the House, will be given permanent effect on Royal Assent. The Order made under the resolution will continue to have effect by virtue of those provisions of the Act arising from the Bill.

3.2 It has been necessary to breach the 21-day rule because it was not possible to make the instrument until after the resolution conferring the power to make it was given temporary statutory effect at the end of the Budget debates. As explained at paragraph 7, it is necessary for the Order to come into force on 1 April 2011 in order to avoid a breach of European law.

## 4. Legislative Context

4.1 Schedule 6 to the Finance Act 2000 provided for taxable commodities used in certain recycling processes to be exempted from the climate change levy by regulations. S.I. 2005/1715 provided for taxable commodities used in the recycling of aluminium, lead and steel to be so exempted. The exemption qualifies as a State aid for which the current approval from the European Commission expires on 31 March 2011. The Government is seeking a re-approval for aluminium and steel recycling. However, approval will not have been received by 1 April 2011. It is therefore necessary to suspend the exemption in

relation to supplies of taxable energy products used in the recycling of these metals pending receipt of the Commission's approval, in order to remain compliant with European law.

## 5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

Although this Order is subject to negative resolution and does not amend primary legislation, it does affect the interpretation of primary legislation, so human rights have been considered.

The Economic Secretary, Justine Greening, has made the following statement regarding Human Rights:

In my view, the provisions of the Climate Change Levy (Suspension of Recycling Exemption) Order 2011 are compatible with the Convention rights.

## 7. Policy background

- ***What is being done and why***

7.1 When the climate change levy was introduced in 2001 a number of exemptions were included for various policy reasons. One of these exemptions benefited the primary production (the smelting from ores) of certain metals. In order not to distort competition between the primary production of metals and the recycling of the same metals, taxable commodities used in the recycling processes for the same metals were also exempted from the levy. The relevant metals were aluminium, lead and steel. The UK secured a 10-year State aid approval from the European Commission in respect of the exemption; that approval expires on 31 March 2011. The Government has applied to renew the State aid approval in respect of aluminium and steel recycling only, because the case for the inclusion of lead recycling in the exemption no longer exists.

7.2 The exemption for lead has been removed by a statutory instrument to take effect on 1 April 2011. The Government remains optimistic that it will secure an approval for a continued exemption for aluminium and steel recycling, but as this approval will not have been received by 1 April, it is necessary to suspend the exemption to remain compliant with EU law and avoid the risks associated with it becoming an illegal State aid. If a further period of approval is received the exemption will be reinstated, and with retrospective effect if the terms of the approval allow. In the latter case taxpayers will be entitled to reimbursement of any levy paid.

- ***Consolidation***

7.3 The Government does not intend to consolidate the legislation at this time.

## 8. Consultation outcome

8.1 The Government consulted the representative bodies for the metal recycling firms involved. In the case of lead, it found that primary production of lead has ceased in the UK so the exemption's application to lead recycling is no longer appropriate. In the case of aluminium and steel recycling, there is strong support for a continued exemption and the case for it is sound. The Government is optimistic that the case put to the Commission will secure a further period of approval. The representative bodies have been advised that the exemption might need to be suspended pending the Commission's decision and there was no adverse reaction to this.

## 9. Guidance

9.1 HM Revenue & Customs wrote to the representative bodies for aluminium and steel recyclers on 16 February 2011 advising what action their members should take if the exemption was suspended. The department's published guidance has not been amended at this stage because it is expected that the duration of the suspension will be short.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 There will be no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published at Budget on 23 March 2011 and is available on the HMRC website at www.hmrc.gov.uk/budget2011/tiin6845.

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 No concerns regarding the impact on small businesses have been expressed by the representative bodies.

## 12. Monitoring & review

12.1 The nature of the instrument is such that there is no requirement to monitor or review its impact.

## 13. Contact

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