EXPLANATORY MEMORANDUM TO

THE CLIMATE CHANGE LEVY (SUSPENSION OF TRANSPORT EXEMPTION) (REVOCATION) ORDER 2011

2011 No. 1178

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

2. Purpose of the instrument

This Order revokes the suspension of the exemption from the climate change levy in respect of taxable commodities (principally electricity) supplied for use by open access rail services and rail freight.

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 House of Commons resolution number 47 passed on 29 March 2011, which has temporary statutory effect by virtue of section 1 of the Provisional Collection of Taxes Act 1968. The provisions of the resolution correspond to provisions contained in clause 79 of the Finance (No. 3) Bill, as published by the House of Commons on 31 March 2011. As this Order has been made before the completion of the passage of the Bill through Parliament, the intention is that the clause will be omitted from the Bill at Committee stage. The resolution will cease to have statutory effect when the clause is left out of the Bill; however, this will not affect the validity of the First Order or of this Order revoking it, as both Orders will have been made during the period when the resolution had statutory effect.

3.2 The revocation provided for in this Order has effect from 1 April 2011, so is retrospective. Subsection 2 of resolution number 47 provides that any order revoking the whole or any part of an order made under it may provide for the revocation to have effect in relation to supplies made on or after a date which is earlier than the date on which the revocation order is made.

3.3 If the exemption is both suspended and revoked before clause 79 comes to the Public Bill Committee for debate, there will be no need for the clause to remain in the Finance Bill and it can be withdrawn. This is considered desirable in order to prevent an unnecessary delegated power remaining on the statute book. The 21-day rule has

been breached in order to ensure this Order can come into force before the start of the Committee debates.

4. Legislative Context

4.1 Paragraph 12 of Schedule 6 to the Finance Act 2000 provides for taxable commodities used in certain forms of transport to be exempted from the climate change levy. The exemption qualifies as a State aid and was approved by the European Commission until 31 March 2011. Since this approval was granted the legal frameworks relating to State aids have changed. Consequently, as far as the transport exemption is concerned, only two specific categories of rail operator – open access rail services (as defined in the Order) and rail freight – continue to require explicit Commission approval.

4.2 The Government applied for a further 10-year period of approval for these rail services, but because that approval had not been received by 1 April 2011, the exemption had to be suspended in order to remain compliant with European law. The suspension was effected by means of the Climate Change Levy (Suspension of Transport Exemption) Order 2011 (S.I. 2011/1025), which came into force on 1 April 2011.

4.3 Commission approval for the exemption, with effect from 1 April 2011, has now been received. Therefore the Government is now able to revoke the suspension of the exemption with effect from that date.

5. Territorial Extent and Application

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 Transport Exemption) (Revocation) 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 was for taxable commodities used in certain forms of

transport. In practice the principal beneficiaries, in terms of the monetary value of the exemption, are electrified rail based public transport services, such as the electrified parts of the national rail network and London Underground. The exemption qualified as a State aid and required the approval of the European Commission. The original period of approval expired on 31 March 2011.

7.2 The policy reasons for exempting these forms of transport remain. Electrified rail based transport continues to be one of the lowest carbon forms of mass transport, and a continued exemption will help to support this mode of travel. The Government therefore sought a further period of State aid approval. The Commission subsequently informed the Government that the bulk of the public transport rail services concerned would be covered by a simplification Regulation passed in 2007 and the exemption for these services would not require explicit approval from the Commission in order for it to continue. However, the simplification Regulation does not apply to the transport of goods by rail (rail freight), or to public passenger transport service providers not subject to public service obligations (which the Order refers to as "open access services"). The exemption for these services did therefore require explicit Commission approval.

7.3 As explained at paragraphs 4.2 and 4.3, the exemption had to be suspended temporarily whilst the Commission's decision was awaited. Now that retrospective approval has been received, the exemption is being reinstated retrospectively. Taxpayers are entitled to reimbursement of any levy paid during the brief period of suspension.

- ***Consolidation***

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

8. Consultation outcome

The Government informally consulted the representative bodies for the various transport sectors concerned. The representative bodies were advised that the exemption might need to be suspended pending the European Commission's decision. They were informed again once the decision was taken to suspend the exemption. On both occasions there was no adverse reaction.

9. Guidance

9.1 HM Revenue & Customs wrote to the representative bodies for rail freight and rail passenger services on 9 March 2011 advising what action their members should take if the exemption was suspended. They wrote again to the affected parties when the exemption was suspended and again when this revocation order was made, advising them that the exemption will be retrospectively reinstated.

9.2 The department's published guidance has not been amended because all those affected by the temporary changes made from 1 April 2011 have been kept updated through written correspondence. The department's published guidance reflects the accurate position of the exemption following the laying of this Order.

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/tiin6840.

10.4 The Note 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

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 on behalf of HM Treasury.