2001 No. 1200

ELECTRICITY

The Fossil Fuel Levy (Amendment) Regulations 2001

Made - - - - -	*27th March 2001*
Coming into force - -	*27th March 2001*
Laid before Parliament	*27th March 2001*

The Secretary of State, in exercise of the powers conferred by sections 33 and 60 of the Electricity Act 1989(**a**), hereby makes the following Regulations:—

Title

1. These Regulations may be cited as the Fossil Fuel Levy (Amendment) Regulations 2001.

Interpretation

2. In these Regulations "the Principal Regulations" means the Fossil Fuel Levy Regulations 1990(**b**).

Amendment

3.—(1) The Principal Regulations are amended in accordance with this regulation.

(2) Regulations 2 to 8 shall be replaced with the following—

"Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

"the Act" means the Electricity Act 1989;

"Amount" has the meaning given in regulation 5;

"auditor's certificate" means a statement given by—

(a) in relation to a company within the meaning of the Companies Act 1985(**c**), the auditor or auditors (as holding office for the time being in accordance with that Act) of the person furnishing the information; and

(b) in relation to any other description of person, a person who is a member of one or more of the following bodies—

(i) the Institute of Chartered Accountants in England and Wales;

(ii) the Institute of Chartered Accountants of Scotland;

(iii) the Chartered Association of Certified Accountants;

(iv) the Institute of Chartered Accountants in Ireland;

(**a**) 1989 c. 29; section 66 of the Utilities Act 2000 provided that section 33 of the Electricity Act 1989 was to cease to have effect. However pursuant to section 67 of the Utilities Act 2000 (c. 27), article 11 of the Non-Fossil Fuel Sources Saving Arrangements Order 2000 (S.I. 2000/2727) provided that section 33 of the Electricity Act 1989 would continue to have effect with certain modifications.

(**b**) S.I. 1990/266 as amended by S.I. 1996/1309 and S.I. 1998/1828.

(**c**) 1985 c. 6.

"banking day" means a day on which banks are generally open in the City of London excluding Saturdays or Sundays;

"business" means the activities of the nominated person which are carried out pursuant to the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000(**a**);

"climate change levy" means the climate change levy as defined in section 30 of the Finance Act 2000(**b**);

"costs cap" for the period from 27th March 2001 to 31st March 2002 means £1.5m and for each subsequent twelve month period beginning on 1st April means the figure for the costs cap in the immediately preceding period multiplied by the ratio of the arithmetic mean of the Retail Price Indices (all items) published in respect of each of the months in the last calendar year ending before 1st April and the arithmetic mean of the Retail Price Indices (all items) published in respect of each of the months in the year prior to such last calendar year;

"data", except in regulation 37, includes assumptions and estimates;

"debt recovery procedure" means a procedure established in accordance with regulation 5A with the aim of ensuring the prompt collection of debts owed to the nominated person in relation to the business;

"levy" means the levy imposed by these Regulations;

"levy payment date" means the date in each month on which a payment is due to be made to the nominated person pursuant to regulation 28(4), or the date on which such payment would have been made had the calculation of the Amount in regulation 5 resulted in a positive number from which no deductions were made;

"licensed generator" means a person authorised by a licence to generate electricity;

"licensed supplier" means a public electricity supplier and also a person authorised by a licence under section 6(2) of the Act to supply electricity within the authorised area of a public electricity supplier;

"licensed transmitter" means a person authorised by a licence to transmit electricity;

"nominated person" has the same meaning in these Regulations as is given to it the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000;

"prescribed interest rate" means a rate which is 4 per centum per annum above the base rate of Barclays Bank plc current from time to time;

"public electricity supplier" means a public electricity supplier whose authorised area falls wholly or mainly in England and Wales;

"qualifying month" in relation to the nominated person means the period from 27th March 2001 to 30th April 2001 and thereafter it means a month beginnning on or after 1st May 2001;

"rate of levy" means the precentage figure from time to time produced by the method set out in regulation 6;

"relevant interest payments" means—

(a) interest payments made pursuant to regulation 29(1); and

(b) interest payments in respect of money invested pursuant to regulation 30;

"relevant period" in regulation 5 means—

(a) in relation to the symbol "C", the qualifying month in which the levy payment date falls;

(b) in relation to the symbol "A", the period commencing on and including the second banking day prior to the previous levy payment date and ending on and including the third banking day prior to the levy payment date in relation to which the calculation of the Amount is being made; and

(c) in relation to the symbols "a", "ii" and "io", the qualifying month preceding the month in which the levy payment date falls:

"unit" means a measure of electrical energy equal to one kilowatt-hour,

and expressions which are used in section 33 of the Act have the same meanings as in that section save where the context requires otherwise.

(**a**) S.I. 2000/2727.
(**b**) 2000 c. 17.

(2) In these Regulations, unless the context otherwise requires—

(a) any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations;

(b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the regulation or Schedule in which the reference occurs;

(c) any reference to the Schedule is a reference to the Schedule to these Regulations; and

(d) any reference to the manner in which an amount has been calculated is a reference to—

(i) the data used in calculating the amount in question;

(ii) the manner in which the data has been used in the calculations;

(iii) the source from which that data has been derived; and

(iv) the arithmetical processes of the calculation.

IMPOSITION OF LEVY

Imposition of levy

3. Each licensed supplier shall pay a levy in respect of each qualifying month in accordance with the following provisions of these Regulations.

PRESCRIBED PERSON AND METHODS

Collector etc of levy: prescribed person

4. The Authority is hereby prescribed as the person to collect payments from licensed suppliers in respect of the levy and to make payments to the nominated person and it shall also collect payments from the nominated person pursuant to section 33(5A) of the Act.

Payments in respect of levy etc: prescribed methods

5.—(1) The method of calculating the amount of the payment required to be made on a levy payment date by either section 33(5) or 33(5A) of the Act in relation to any qualifying month is as described in this regulation.

(2) The "Amount" is the number which results from applying the formula in paragraph (3) together with any modification to that number which is made pursuant to paragraph (5).

(3) The formula is—

$$C - A + a - ii + io - x + y + z$$

where—

"C" is the aggregate payments paid or due to be paid by the nominated person in the relevant period pursuant to or otherwise arising from qualifying arrangements (to the extent not already taken into account in the calculation of the Amount for a previous levy payment date);

"A" is the aggregate payments received by the nominated person during the relevant period in relation to sales of electricity or rights relating to electricity generated pursuant to qualifying arrangements;

"a" is, subject to pararaph (4), the costs (other than interest) reasonably incurred by the nominated person in relation to the business in the relevant period;

"ii" is interest received by the nominated person in the relevant period on any sums held by it in relation to the business;

"io" is interest paid by the nominated person in the relevant period on borrowings made by it in order to enable it to conduct the business efficiently provided that the interest rate with reference to which such interest is calculated does not exceed the prescribed interest rate;

"x" is zero unless the Authority has determined an amount in accordance with paragraph (6), in which case "x" is that amount;

"y" is zero unless an amount is due to be paid on the levy payment date pursuant to regulation 28(5) and (6), in which case "y" is that amount; and

"z" is zero unless the Authority has determined any amount in accordance with paragraph (7), in which case "z" is the aggregate of any such amounts.

(4) The costs of the nominated person may only be included in item "a" above to the extent that those costs in the relevant period when added to the sum included as item "a" in the above calculation in each of the eleven months prior to the relevant period do not exceed the costs cap. Having so calculated, such costs incurred in the relevant period in excess of the costs cap may not be included in "a" in calculations of the Amount in relation to any future levy payment date.

(5) Additions to or subtractions from the number resulting from the application of the formula in paragraph (3) may be made to reflect sums received or paid by the nominated person in relation to the items listed in paragraph (3) in order to correct or update figures given for payments or receipts in relation to those items for any previous qualifying month.

(6) Where the Authority reasonably considers that the nominated person has not complied with the debt recovery procedure established in accordance with regulation 5A to a material extent in respect of a debt or debts, it may determine that an amount representing interest on any such outstanding debt or debts may be used as the figure for "x" in the formula in paragraph (3) for the purpose of calculating the Amount in relation to a particular levy payment date.

(7) Where, in relation to any previous levy payment date in calculating the Amount the Authority has determined that "x" should include a figure in connection with a particular debt owing to the nominated person, and the said debt has since been recovered by the nominated person in full, for the purposes of calculating the Amount on the levy payment date following such recovery of the debt the Authority shall determine an amount for inclusion in "z" which is equivalent to the aggregate of any figures included in "x" in relation to that debt in the calculation of the Amount on any previous levy payment date.

(8) Where the Amount is a positive number that number represents the amount which is required to be paid to the nominated person by section 33(5) of the Act in accordance with regulation 28.

(9) Where the Amount is a negative number that number represents the amount which is required to be paid by the nominated person to the prescribed person by section 33(5A) of the Act in accordance with regulation 41.

Debt Recovery Procedure

5A.—(1) The Authority shall, by 31st May 2001 and having first consulted the nominated person and the Secretary of State, determine a procedure with the aim of ensuring the prompt collection by the nominated person of debts owing to it in relation to the business.

(2) The debt recovery procedure shall include provisions to the following effect—

(a) that the nominated person and the Secretary of State shall be consulted prior to any determination by the Authority being made under regulation 5(6);

(b) that the interval between the making of the determination referred to in regulation 5(6) and the application of that determination on a levy payment date shall be at least one month;

(c) that sum representing interest referred to in regulation 5(6) in respect of any outstanding debt shall be calculated in respect of the period from the date on which the Authority reasonably considers that the nominated person failed to comply with the debt recovery procedure in relation to the debt to a material extent until the earliest of the following events—

(i) the debt is collected;

(ii) such time as the Authority reasonably considers that the nominated person has done all that is reasonable in order to comply with the procedure in relation to the debt; or

(iii) such time as the Authority reasonably considers that the nominated person has done all that is reasonable to seek to recover the debt;

(d) that the interest rate to be applied in the calculation of the figure for "x" in regulation 5 shall not exceed (but where the Authority considers it appropriate it may be less than) the base rate of Barclays Bank plc current from time to time;

(e) that the procedure may be amended at any time by agreement in writing of the Authority and the nominated person provided that the Secretary of State has been consulted before any such amendment takes affect.

(3) The Authority and the nominated person shall comply with the debt recovery procedure.

CALCULATION ETC OF RATE OF LEVY

Calculation and notification of rate of levy

6.—(1) From time to time the Authority shall calculate the rate of the levy in accordance with the method set out in paragraph (2). The rate of the levy must be reviewed by the Authority according to that method at least once in any period of 12 months.

(2) In calculating or reviewing the rate of the levy the Authority shall take the following matters into account in relation to a period of time defined by it (which shall not exceed 12 months):

(a) the likely amount required by regulation 5 to be paid by or to the nominated person;

(b) the likely aggregate amount of all interest payments to be paid pursuant to regulation 29(1) less the likely aggregate amount of all interest payments to be paid pursuant to regulation 29(2);

(c) the amount of the administrative expenses of the Authority likely to be deducted and retained by it in accordance with regulation 28(2);

(d) the aggregate amount of all interest payments likely to be received pursuant to regulation 30;

(e) the aggregate amount of any money likely to be held or invested by the Authority having been received pursuant to these regulations; and

(f) the aggregate amount (exclusive of the levy, value added tax and climate change levy) likely to be charged (whether or not a bill or invoice has been delivered to a customer) by licensed suppliers for leviable electricity supplied by them.

(3) At least fourteen days before any notification under paragraph (4) is issued, the Authority shall consult the Secretary of State on the calculation or review of the levy rate and shall provide the Secretary of State with all assumptions, information and data upon which the calculation or review is based. The Secretary of State may make representations to the Authority in relation to the intended rate of the levy and the Authority shall take account of any such representations before issuing the notification referred to in paragraph (4).

(4) Having calculated or reviewed the rate of the levy the Authority shall notify the rate of the levy to the Secretary of State, the nominated person and each licensed supplier. Any change in the rate of the levy shall be notified to the above persons at least three months before the commencement of the qualifying month, or the first of the qualifying months, to which it applies.

(5) The Authority shall also notify the rate of the levy to the applicant for a licence under section 6(1)(c) or (2) of the Act—

(a) in the case of a licence under section 6(1)(c), at the same time as the publication in relation to the licence of the notice mentioned in section 6(4) and (5) of the Act; and

(b) in the case of a licence under section 6(2), at the time the licence is granted.

Publication of rate of levy

7. The Authority shall arrange for the publication of the rate of levy calculated by him in accordance with regulation 6 in such form and such manner as he considers appropriate for bringing it to the attention of consumers of electricity supplied by licensed suppliers.

Contractual entitlements to electricity

8.—(1) In relation to supplies of electricity other than leviable electricity, where a licensed supplier is exclusively entitled under any agreement with the operator of a generating station specified, or of a description specified, in the agreement or with any person who is entitled to procure the delivery of electricity generated by any such station to direct the delivery to him or to a public electricity supplier or to a licensed transmitter of all or part of the electricity generated by such station and—

(a) a direction is given by or on behalf of the supplier in or pursuant to that agreement requiring the delivery during a qualifying month of a quantity (specified in or calculated in accordance with the direction and being either the whole or a part less than the whole) of the electricity generated by that station;

(b) the specified quantity of electricity is so generated and is delivered in accordance with such direction;

(c) at the time of delivery it is not physically impossible for an amount of electricity equal to the specified quantity of electricity to have been conveyed from the station to the point of delivery or, as the case may be, in the aggregate to the points of supply; and

(d) the supplier supplies in the same qualifying month a quantity of electricity at least equal to the quantity specified in or calculated in accordance with his direction,

then, and subject to evidence of the above-mentioned matters being provided to the reasonable satisfaction of the Authority, and subject to regulations 9 and 10, for the purposes of these Regulations the licensed supplier shall be regarded as having supplied during that qualifying month a quantity of electricity other than leviable electricity generated by the generating station mentioned in paragraph (a) of this regulation equal to whichever is the lesser of the quantity mentioned in that paragraph and the quantity of electricity generated and delivered as mentioned in paragraph (b) of this regulation.

(2) In relation to supplies of leviable electricity, paragraph (1) shall apply as if it referred to leviable electricity instead of to electricity other than leviable electricity with the exception that evidence of the matters mentioned in sub-paragraphs (a) to (d) of paragraph (1) only need be provided to the Authority if it so requests.".

(3) Regulations 11 and 12 shall be replaced with the following—

"Principal payments in respect of levy

11.—(1) Each licensed supplier shall make payments in respect of the levy in accordance with the following provisions of this regulation.

(2) In respect of each qualifying month, the licensed supplier shall calculate (and, in doing so, shall take into account any deductions which he may make in accordance with these Regulations) the amount of the payment due from him by applying the rate of levy notified to him by the Authority in accordance with regulation 6 to the aggregate amount (exclusive of the levy, value added tax and climate change levy) charged (whether or not a bill or invoice has been delivered to a customer) by him for leviable electricity supplied by him.

(3) Not more than one month after the end of each qualifying month the licensed supplier shall make the payment which he has calculated to be due from him in respect of that month to the Authority.

(4) If the licensed supplier makes the payment mentioned in paragraph (3) later than one month after the end of the qualifying month in question but before any notice has been served on him under paragraph (1) of regulation 16 or 17, he shall also pay an amount in respect of interest in accordance with regulation 29(1).

Statements etc to accompany principal payments in respect of levy

12.—(1) At the same time as he makes a payment in accordance with regulation 11, and without prejudice to any other provision of these Regulations which requires the licensed supplier to furnish the Authority with any description of statement, information or other material, the licensed supplier shall furnish to the Authority a statement in accordance with this regulation.

(2) A statement in accordance with this regulation shall—

(a) set out the manner in which the licensed supplier has calculated the amount of the payment mentioned in paragraph (1); and

(b) without prejudice to the generality of sub-paragraph (a) of this paragraph, include the best estimate the supplier can make (after taking into account the effect in relation to him of regulations 8 to 10 during the qualifying month in question) of the quantities (expressed in kilowatt hours) of—

(i) leviable electricity;

(ii) electricity other than leviable electricity;

supplied by him during the qualifying month in question; and

(c) set out the price per kilowatt hour at which the supplier purchased the supplies of leviable electricity supplied by him during the qualifying month in question.

(3) With each statement in accordance with this regulation the licensed supplier shall also furnish to the Authority such evidence as may be available to him to justify the estimate mentioned in sub-paragraph (b) of paragraph (2) including (but without prejudice to the generality of the foregoing) evidence of the effect in relation to him of regulations 8 to 10 during the qualifying month.".

(4) Regulations 15 and 19 shall be omitted.

(5) Regulations 20 and 21 shall be replaced with the following—

"SUPPLY BELOW PURCHASE PRICE

Supply below purchase price: additional statements to be furnished to prescribed person

20.—(1) If, in the statement mentioned in regulation 12, the price at which the licensed supplier purchased leviable electricity exceeds the price at which such electricity was sold by him, the licensed supplier shall furnish the Authority with a statement setting out—

(a) any price below the purchase price which he is charging for leviable electricity;

(b) the manner in which that price has been calculated; and

(c) any reasons which the supplier may have to justify a belief on his part that it is appropriate in all the circumstances for amounts payable by him in respect of the levy to be calculated by reference to that lower price.

(2) The statement mentioned in paragraph (1) shall be furnished to the Authority at the same time as the licensed supplier furnishes him with the statement in accordance with regulation 12.

(3) The licensed supplier shall furnish the Authority with a further statement on each occasion when there is a change in any matter set out in the statement mentioned in paragraph (1).

(4) A statement under paragraph (3) shall set out the change which has taken place, and the reasons for that change.

Supply below purchase price: action by prescribed person

21.—(1) The Authority shall consider the matters set out in any statement furnished under regulation 20 and may require the licensed supplier to provide an auditor's certificate as to whether—

(a) any price is set out in such statement; and

(b) the manner in which that price has been calculated,

have been fairly stated and properly compiled.

(2) The Authority may also serve notice on the licensed supplier requiring him to provide further reasons justifying any price below the purchase price for electricity which the licensed supplier has set out in a statement under regulation 20.

(3) If the Authority does not accept that it is appropriate in all the circumstances for amounts payable by the licensed supplier in respect of the levy to be calculated by reference to any price being charged for electricity he shall, within 28 days of the date upon which he received the statement or (if requested) the auditor's certificate or further reasons, serve on the licensed supplier a notice under regulation 22.

(4) The Authority may also by notice served on the licensed supplier require the supplier to furnish him with a statement setting out—

(a) any price which the licensed supplier is charging for any electricity;

(b) the manner in which that price has been calculated; and

(c) any reasons which the supplier may have to justify a belief on his part that it is appropriate in all the circumstances for amounts payable by him in respect of the levy to be calculated by reference to that price,

and the Authority may also in like manner require the licensed supplier to provide an auditor's certificate that any calculation so furnished is fairly stated and properly compiled.

(5) If, after having regard to any statement furnished under paragraph (4), and to any auditor's certificate provided under that paragraph, the Authority considers that any price charged by the licensed supplier is less than the price which the Authority thinks it would be appropriate to charge for electricity, he shall serve on the licensed supplier a notice under regulation 22.

(6) Any auditor's certificate required to be provided under this regulation shall be provided as quickly as is reasonably practicable and in any event not more than 60 days after the date of the Authority's request.".

(6) References to "market price" in the titles to regulations 22 and 23 shall be replaced with references to "purchase price".

(7) Regulation 27(1)(b) shall be omitted.

(8) Regulation 28 shall be replaced with the following—

"Application and distribution of levy

28.—(1) Payments received by the Authority in respect of a qualifying month pursuant to these Regulations shall be applied and distributed by him in accordance with this regulation.

(2) The Authority shall deduct and retain from the payments mentioned in paragraph (1) the amount of the administrative expenses incurred by him in respect of the qualifying month as the person prescribed by these Regulations for the purposes of section 33(1)(b) and (c) of the Act and in respect of his collection of payments from the nominated person pursuant to section 33(5A) of the Act.

(3) Subject to paragraphs (5) and (6) and where regulation 5(8) requires that a payment be made to the nominated person, the balance of the payments mentioned in paragraph (1) shall be applied to the making of the payment in respect of each qualifying month to the nominated person in respect of the amounts contemplated by subsections (5) and (6)(c) of section 33 of the Act as being payable in respect of that month.

(4) The first payment pursuant to paragraph (3) shall, without prejudice to paragraphs (5) and (6), be made on 8th May 2001 and subsequent payments shall be made on the fifth banking day of each subsequent qualifying month.

(5) If any of the payments mentioned in paragraph (1) are not received by the Authority in time to be applied and distributed in accordance with the preceding provisions of this regulation, such payments shall, as soon as practicable after the payment mentioned in paragraph (4) has been made, be added in the appropriate amounts to the next payment due to be made under this regulation to the nominated person.

(6) For the purposes of paragraph (5), the appropriate amount as regards the payment mentioned in that paragraph in relation to the nominated person is an amount equal to the difference between—

(a) the payment actually made to the nominated person under paragraph (4); and

(b) the payment which would have been made to the nominated person if the payment first mentioned in this paragraph had been received by the Authority in time for it to have been applied and distributed in accordance with paragraphs (2) to (4).".

(9) Regulation 29(2)(b) shall be omitted.

(10) In regulation 30(2) the words ",until they are required for the making of payments pursuant to regulation 32," shall be omitted.

(11) Regulation 31 shall be replaced with the following—

"Prescribed person's records and accounts

31.—(1) The Authority shall keep separate records of—

(a) all payments received by it pursuant to any of the preceding provisions (except regulations 29 and 30) of these Regulations;

(b) all relevant interest payments received by it; and

(c) all administrative expenses incurred by it in connection with the levy.

(2) The Authority shall maintain one or more bank accounts for all payments received by it pursuant to these Regulations, and shall keep such account or accounts separate from all other bank accounts maintained by it.

(3) The Authority shall send a statement of the amount standing for the time being to the credit of any such account as is mentioned in paragraph (2) to the Secretary of State and the nominated person at monthly intervals.

(4) The Authority shall also send a statement of the administrative expenses incurred by it in connection with the levy and of the costs of the nominated person (defined as "a" in regulation 5) to the licensed suppliers and the nominated person at intervals of not more than six months.

(5) Within ten banking days of the end of each month the Authority shall also send to the Secretary of State a statement of aggregate levy receipts, relevant interest payments, the Authority's administrative expenses and payments made to or received from the nominated person during that month.".

(12) Regulation 32 shall be omitted.

(13) Regulation 33 shall be replaced with the following—

"Provision of information to prescribed person

33.—(1) Subject to paragraph (2), and without prejudice to regulation 34, the Authority may by notice served on any person who is—

(a) a licensed supplier;

(b) a licensed transmitter;

(c) a licensed generator; or

(d) the nominated person,

require that person to furnish, at such reasonable time and place as may be, and in the form and manner, specified in the notice, to the Authority such information of a description contained in the Schedule as may be specified in the notice.

(2) No person shall be required, when complying with a notice under paragraph (1), to give any information which he could not be compelled to give in evidence in civil proceedings in the High Court.

(3) Any person furnishing information to the Authority in accordance with a notice under paragraph (1) shall, if the notice so requires, provide an auditor's certificate that such information, or any such part of that information as may be specified in the notice, is fairly stated and properly compiled.".

(14) In regulation 35 all references to "Schedule 4" shall be replaced with references to "the Schedule".

(15) In regulation 37—

(a) paragraph (1) shall be replaced with the following—

"(1) The nominated person, each licensed supplier, each licensed transmitter and each licensed generator shall retain for the prescribed period any relevant records.";

(b) in paragraph (2), after the words "the prescribed period" the words "the nominated person," shall be inserted; and

(c) in paragraph (3)—

(i) in sub-paragraph (b) of the definition of "prescribed period", after the words "in the case of" the words "the nominated person" shall be inserted; and

(ii) in sub-paragraph (b) of the definition of "relevant records", before the words "a licensed supplier" there shall be inserted the words "the nominated person,".

(16) Regulations 40(3)(b), 41 and 42 together with Schedules 1, 2 and 3 shall be omitted.

(17) After regulation 40 insert the following—

"CALCULATIONS AND PAYMENTS BY THE NOMINATED PERSON

Calculations and payments to be made by the nominated person

41.—(1) In respect of each qualifying month the nominated person shall calculate the amount of any payment due to or from him in accordance with regulation 5 and shall provide the Authority with a statement setting out how the Amount referred to in regulation 5 has been calculated and including the figures used in calculating that Amount.

(2) The nominated person shall provide the Authority with the statement referred to in paragraph (1) on the banking day prior to the relevant levy payment date.

(3) Where in relation to any qualifying month the Amount is a negative number the nominated person shall, subject to regulation 43, pay that sum to the Authority on the levy payment date immediately following the date on which the statement in paragraph (2) has been provided.

(4) If the nominated person makes the payment referred to in paragraph (3) later than the next levy payment date, at the discretion of the Authority, it may also be required to pay interest on that sum at a rate not exceeding the prescribed rate from the levy payment date on which such payment should have been made until such payment is actually made.

(5) In any case where the Authority determines that interest is payable under paragraph (4), the amount of such interest may not be included under any item listed in regulation 5 for the purposes of calculating the Amount on any levy payment date.

Over and under payments by the nominated person

42.—(1) In relation to any payments required to be made by the nominated person in accordance with regulation 41, regulations 16, 17 and 18 shall apply as if they referred to—

(a) payments under regulation 41 (instead of regulation 11);

(b) payments by the nominated person (instead of by licensed suppliers); and

(c) interest payments under regulation 41(4) (instead of under regulation 29(1)).

(2) In relation to any payments required to be made to the nominated person in accordance with regulation 28, regulations 24, 25 and 26 shall apply as if—

(a) they referred to payments under regulation 28 (instead of regulation 11);

(b) they referred to payments to the nominated person (instead of to licensed suppliers); and

(c) there were no reference to interest under regulation 29(2).

Deductions by the nominated person

43.—(1) If any amount which the nominated person is entitled to deduct pursuant to regulation 42(2) is greater than the amount of the next payment due from him under regulation 41, he need not make that next payment and he may deduct the balance of the amount which he is entitled to deduct from the next succeeding payment due from him under regulation 41.

(2) Paragraph (1) shall apply in relation to successive payments due under regulation 41 until the nominated person has deducted the whole of the amount of the deduction which he is entitled to make.

(3) Where in pursuance of this regulation the nominated person does not make a payment on a levy payment date in accordance with regulation 41, he shall nevertheless provide the Authority with a statement in relation to that month in accordance with regulation 41, save that such statement shall set out the manner in which the nominated person has calculated the amount of the payment which he would have paid but for this regulation.

TRANSITIONAL ARRANGEMENTS

Transitional arrangements for public electricity suppliers

44.—(1) For the purposes of any payments to or from public electricity suppliers (except payments required to be made by them pursuant to regulation 11) the entitlement to which accrued prior to 27th March 2001 (whenever such payments are actually made), these regulations shall continue to have effect as they did on 26th March 2001.

(2) These Regulations shall also continue to have effect as they did on 26th March 2001 in relation to any interest payments to be made to or from public electricity suppliers (save any interest payments relating to payments due to be made under regulation 11) where the entitlement to such interest accrued after 27th March 2001 provided that such interest payments relate to payments the entitlement to which accrued prior to 27th March 2001.".

(18) Replace the title of "Schedule 4" with "The Schedule".

(19) In the Schedule—

(a) at the end of paragraph 1(b) delete the word "and";

(b) at the end of paragraph 1 insert the following—

"; and

(d) aggregate payments received or due to be received by the nominated person in relation to sales of electricity or rights relating to electricity generated pursuant to qualifying arrangements.";

(c) in paragaph 3(f) after the words "value added tax" insert the words ", climate change levy";

(d) in paragraph 3(g) after the words "value added tax" insert the words "and climate change levy";

(e) in paragraph 7 replace the words "regulations 3 to 40 and 42" with "these Regulations"; and

(f) at the end of paragraph 15 insert the following—

"PART IV

16. Where requests for estimated figures are made under this Part IV, such requests must be reasonable and not unduly onerous on the nominated person.

17. Estimates or actual figures for any year or part of a year to be provided by the nominated person of—

(a) each of the items defined in regulation 5 as "C", "A", "a", "ii", "io", "y" and the Amount;

(b) total quantities of electricity made available to the nominated person under qualifying arrangements and total quantities made available under each individual qualifying arrangement, measured by a meter installed for the purpose and expressed in kilowatt hours;

(c) the price per kilowatt hour at which the nominated person purchases electricity under each individual qualifying arrangement and the price at which he sells rights to such electricity; and

(d) information which the Authority may reasonably require in order to assess compliance by the nominated person with the debt recovery procedure, the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000 and these Regulations.

18. Particulars of the manner in which estimates or actual figures provided pursuant to paragraph 16 have been calculated.".

Peter Hain,
Minister for Energy and Competitiveness in Europe,
Department of Trade and Industry

27th March 2001

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Fossil Fuel Levy Regulations 1990 ("the Principal Regulations") (S.I. 1990/266). They come into force on being made on 27th March 2001. Any reference in this note to a numbered regulation is a reference to the regulation bearing that number in the Principal Regulations.

There are a various minor and consequential changes, however the main changes of substance are to adapt the Principal Regulations to the absence of the electricity pool following the introduction of the new electricity trading arrangements on 27th March 2001 and to make provision for payments out of levy to be made to the nominated person (as defined in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000 (S.I. 2000/2727) instead of to the public electricity suppliers.

Regulation 5 sets out the method of calculating the amounts to be paid to or by the nominated person pursuant to section 33(5) and (5A) of the Electricity Act 1989. This includes provision for the nominated person to be reimbursed its costs which are reasonably incurred in relation to the sale and purchase of electricity which has been generated pursuant to qualifying arrangements. Regulation 5A provides that the Authority is to determine a debt recovery procedure with the aim of ensuring the prompt collection of debts owed to the nominated person.

Regulation 6 re-expresses the method to be used by the Authority in calculating the rate of levy—the method is now set out in a narrative rather than formulaic manner, with the result that Schedules 1, 2 and 3 have been omitted. The method has also been modified to take into account the absence of the electricity pool and the fact that payments out of levy are to be paid to (or may be received from) the nominated person.

Regulation 6 also includes a requirement on the Authority to calculate or review the levy rate at least once every 12 months. The Authority no longer has to calculate the rate of the levy with reference to a specific levy year (which previously commenced on 1st October each year). Before notifying licensed suppliers and the nominated person of the levy rate the Authority must consult the Secretary of State.

Regulations 15 and 19 have been omitted. Regulations 20 and 21 have been amended to remove the concept of supply below market price as this was reliant on the existence of the electricity pool. These regulations now refer to supply below purchase price.

Regulation 28 has been amended to make provision for payments to be made to the nominated person and for these payments to be made on the fifth banking day of each qualifying month.

Regulations 33, 37 and the Schedule (which was previously Schedule 4) have been amended to impose information provision and retention requirements on the nominated person.

The original regulations 41 and 42 have been omitted. New regulation 41 makes provision for payments to be made by the nominated person to the Authority. New regulations 42 and 43 make provision for the correction of over and under-payments made to or by the nominated person.

Regulation 44 makes transitional provision for the Principal Regulations to be treated as not having been amended by these Regulations in relation to payments to public electricity suppliers where entitlement to those payments accrued to prior to 27th March 2001.

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