EXPLANATORY MEMORANDUM TO

THE HYDROCARBON OIL DUTIES (RELIEFS FOR ELECTRICITY GENERATION) (AMENDMENT AND MODIFICATION) REGULATIONS 2021

2021 No. 676

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (S.I. 2005/3320, as amended) (the principal Regulations) to update references to the Combined Heat and Power Quality Assurance Standard (CHPQA) and to certificates issued under the CHPQA Scheme. The CHPQA Standard has been updated to confirm an easement in the certification process which will provide continuity of financial support, preventing a secondary financial hit to organisations in 2021 caused by the COVID pandemic.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom, except for regulations 3 and 4(2), which apply only in Great Britain, and regulation 4(3) which applies only in Northern Ireland

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The CHPQA Scheme, through the CHPQA Standard, outlines the CHPQA methodology, definitions, thresholds and criteria for Good Quality certification of a Combined Heat and Power (CHP) plant. The latest version of the CHPQA Standard (Issue 8) was published by the Department for Business, Energy and Industrial Strategy (BEIS) on 10 March 2021 to reflect the temporary easement for CHP plants impacted by COVID-19 lockdowns.

6.2 This instrument amends and modifies Part 4 of the principal Regulations to update references in those Regulations to the CHPQA Standard and to certificates issued under it. The principal Regulations contain provisions relating to the conditions and calculation of the relief from fuel duty to which operators of certified CHP plants are entitled and in Great Britain also apply the carbon price support rate by way of deduction from that relief.

7. Policy background

What is being done and why?

7.1 CHP is an energy efficient technology that allows generation of both heat and power on site, providing fuel and carbon savings compared to separate generation.

7.2 The CHPQA Scheme was launched in 2001 as a voluntary programme to assess and certify efficient CHPs. To encourage CHP installations and efficient use of the technology, certification through the CHPQA Scheme enables operators to access multiple benefits, including relief from fuel duty.

7.3 During the COVID-19 lockdown and restrictions in 2020, some CHP operators were required to alter how they operate their plants, potentially having a detrimental effect on the CHPQA certification of some operators in 2021. BEIS has agreed to provide a temporary easement in the CHPQA Standard to accommodate these operators, should they wish to seek it. This is being implemented by the issue of a new, amended CHPQA Standard (Issue 8).

7.4 Therefore, this instrument is a consequential amendment in order to implement to temporary COVID easement for CHPs affected. It is being made in conjunction with the Climate Change Levy (General) (Amendment and Modification) Regulations 2021 made by the Commissioners for HM Revenue and Customs relating to the climate change levy and two other statutory instruments – the Renewable Heat Incentive Scheme (Temporary Modification) Regulations 2021 (S.I. 2021/346) and the Combined Heat and Power Quality Assurance (Temporary Modifications) Regulations 2021 (S.I. 2021/656) - made by BEIS in relation to schemes administered by that department.

7.5 The modifications made by regulation 4 of this instrument will allow the relevant CHPs who become certified under Issue 8 of the CHPQA Standard for their 2021 certification to claim their normal reliefs in respect of fuel duty. Regulation 9(2)(c) is worded differently in Northern Ireland than in the rest of the United Kingdom so separate provision is made to modify each version of that regulation. Regulation 9(2)(d) ensures that any supplementary information issued under the COVID-19 easement (Guidance Note 60 under Issue 8) is also taken account of in Northern Ireland in a relief claim made where fuel is used in generation whilst the COVID-19 easement is in place.

7.6 The amendment made by regulation 3 of this instrument updates the definition of CHPQA to issue 7 to ensure that, in Great Britain, CHP installations that are not subject to the temporary measures under Issue 8 will be certified under Issue 7. The amendment will also ensure that, after the end of the relaxation period, relief will again be provided on the basis of compliance with Issue 7 for all CHP installations. The definition of CHPQA in the version of the principal Regulations applying in Northern Ireland is different and the instrument does not amend that version.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument is not a consolidation measure. It makes amendments to existing legislation, which is not consolidated at this time.

10. Consultation outcome

10.1 BEIS consulted stakeholders on their proposed COVID easement to allow submission of 2019 operational data instead of their 2020 data for 2021 certification, during December 2020 and January 2021. All stakeholders that responded agreed and welcomed the change, with no major concerns raised. This instrument is consequential to that consultation and resulting legislative changes made by BEIS, and no further consultation is required. Details of the consultation outcome can be found at https://www.gov.uk/government/consultations/combined-heat-and-power-quality-assurance-proposed-temporary-easements-in-response-to-the-covid-19-pandemic.

11. Guidance

11.1 Issue 8 of the Combined Heat and Power Quality Assurance Scheme Standard was published on 10th March 2021 and can be found on https://www.gov.uk/government/publications/chpqa-standard. Further guidance on the CHPQA Scheme can be found on https://www.gov.uk/guidance/chpqa-guidance-notes.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that any relevant CHPs which they operate will be able to continue claiming the relevant relief from fuel duty, where appropriate. There is no other, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was in the context of the fact that this instrument aims to assist relevant businesses and additional administrative burdens will be negligible.

14. Monitoring & review

14.1 No review provision is required for this instrument as a review would be disproportionate taking into account the negligible additional economic impact of

these regulations and because the amendment is only a temporary fix for 2021 CHPQA certification.

15. Contact

15.1 Sonia Swales at the HM Revenue and Customs. Telephone: 03000 537524, email: sonia.swales@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Annie Purkis, Deputy Director for Indirect Tax at the HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP, Exchequer Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.