EXPLANATORY MEMORANDUM TO

THE HYDROCARBON OIL DUTIES (RELIEFS FOR ELECTRICITY GENERATION) (AMENDMENT) REGULATIONS 2007

2007 No. 2191

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

2. Description

2.1 The instrument expands the circumstances in which relief from excise duty arises for hydrocarbon oil used to generate electricity.

2.2 This is to align the excise relief more closely with the analogous climate change levy reliefs for electricity from generators that are not fuelled by hydrocarbon oil.

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

3.1 None.

4. Legislative Background

4.1 Rebated heavy oil used to generate electricity may be relieved from excise duty under the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (S.I. 2005/3320).

4.2 Regulation 2 of S.I. 2005/3320 defines "qualifying oil" as heavy oil on whose delivery for home use rebate has been allowed under section 11(1) of the Hydrocarbon Oil Duties Act 1979 (c. 5). Regulations 3(1), 3(2), 9(2), 10(1), 13(2) and 13(3), and the Schedule, use that definition in constructing the excise relief scheme.

Regulation 2(c) of the instrument adds analogous light oil to the definition so that it too may qualify for relief when used to generate electricity.

4.3 Regulations 2(a) and 2(b) of the instrument provide S.I 2005/3320 with replacement concepts for "auto-generator" and "exempt unlicensed electricity supplier" which are closer to their counterparts in climate change levy (CCL). This better aligns the excise reliefs with those of CCL.

(In essence, an auto-generator is someone who generates electricity primarily for own consumption. An exempt unlicensed electricity supplier is someone who is exempt from needing authorisation by a licence to supply electricity to premises.)

4.4 Regulation 3(1) of the instrument amends S.I. 2005/3320 to allow relief for auto-generators and exempt unlicensed electricity suppliers using combined heat and powers stations.

(Regulations 2 and 3(2)(a) of S.I. 2005/3320 draw on the concepts and definitions

of “auto-generator”, “exempt unlicensed electricity supplier” and “combined heat and power station” (stations also supplying heat or steam) used for CCL purposes in paragraphs 14(4), 152 and 148 of Schedule 6 to the Finance Act 2000 (c. 17). The effect precludes excise relief for auto-generators and exempt unlicensed electricity suppliers, except when they supply electricity to an electricity utility. This follows from regulation 3(3) of S.I. 2005/3320, which draws on regulation 41 of S.I. 2001/838. Regulation 3(1) of the instrument remedies this, as already described.)

Regulation 3(2) of the instrument re-writes regulation 3(3) of S.I. 2005/3320 for better alignment with CCL.

4.5 The explanatory memorandum to S.I. 2005/3320 fully explains its background and is available alongside that instrument on the website of the Office of Public Sector Information. The background to this instrument is identical. It is being made to allow excise relief in situations unforeseen by HM Revenue & Customs when making S.I. 2005/3320.

5. Territorial Extent and Application

5.1 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

7.1 A relief for rebated heavy oils used to generate electricity was introduced with effect from 1 January 2006, to avoid double taxation and ensure consistency of treatment with other energy products used for the same purpose.

7.2 The instrument amends the scope of the relief and makes it more consistent with the CCL rules.

7.3 In particular, the definition of qualifying oil has been amended so that relief can be claimed on light oils.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible.

9. Contact

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