EXPLANATORY MEMORANDUM TO

THE HYDROCARBON OIL DUTIES (RELIEFS FOR ELECTRICITY GENERATION) (AMENDMENTS FOR CARBON PRICE SUPPORT) REGULATIONS 2013

2013 No. 657

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

2. Purpose of the Statutory Instrument

2.1 This Statutory Instrument, which comes into force on 1 April 2013, amends the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 ("the principal Regulations") which introduced a relief from excise duty for rebated oils used to produce electricity. Except in the case of generating stations or combined heat and power (CHP) stations in Northern Ireland, the purpose of this instrument is to reduce the amount of relief that is currently allowed on oils used to generate electricity in a generating station or CHP station so that such oils are subject to carbon price support (CPS) rates of fuel duty from 1 April 2013.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 It has not been possible to comply with the 21 day rule. This is because the instrument could not be laid until the Chancellor of the Exchequer announced the CPS rates in the Budget on 20 March 2013 and the instrument has to come into force on 1 April 2013 when the carbon price floor comes into effect.

4. Legislative Context

4.1 The European Council Directive 2003/96/EC ("the Directive") on restructuring the Community framework for the taxation of energy products (gas, liquefied petroleum gas (LPG) oils and solid fossil fuels, such as coal) and of electricity establishes the general arrangements for the taxation of these products, including setting minimum tax rates for these products. While the Directive requires Member States to exempt energy products used in the generation of electricity from general taxation, it does allow them to tax such products in these circumstances for reasons of environmental policy. In addition, in the interests of protecting the environment, it authorises EU countries to grant tax advantages to businesses that take specific measures to reduce their emissions.

4.2 In introducing the carbon price floor from 1 April 2013, the United Kingdom (UK) has decided to take up the option in the Directive to allow Member States to subject energy products used in electricity generation to tax for reasons of environmental policy. The price floor will be achieved by taxing fossil fuels used in electricity generation through new CPS rates of climate change levy (CCL) and fuel duty.

4.3 In relation to oil, the UK implements this Directive through excise duty on hydrocarbon oils, the primary legislation for which is contained in the Hydrocarbon Oil Duties Act 1979, as amended. The principal Regulations enable generators that use rebated heavy and light oils to generate electricity to reclaim the fuel duty paid on the oil when it leaves the refinery. They also contain details of the relief from fuel duty for oils used in a CHP station to generate electricity.

4.4 This instrument will amend the principal Regulations as a result of the introduction of the carbon price floor, to reduce the amount of relief from excise duty currently available on heavy and light oils used to generate electricity so that the amount of duty payable reflects the CPS rates of fuel duty.

4.5 The carbon price floor will also apply to coal and other solid fossil fuels, gas and LPG used to generate electricity. However, these fuels are not subject to fuel duty and the price floor on these fuels when they are used to generate electricity will be achieved through separate primary legislation covering changes to CCL.

5. Territorial Extent and Application

5.1 This instrument extends to all of the UK but, in relation to generating stations and CHP stations situated in Northern Ireland, it applies subject to regulation 1(3).

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

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

7.1 In order to encourage additional investment in low-carbon power generation, the Government announced at Budget 2011 that, following consultation, it would introduce a carbon price floor with effect from 1 April 2013. Supplies of fossil fuels used in electricity generation will become liable to newly created CPS rates of CCL or fuel duty from that date. The Government believes a carbon price floor will build upon the EU Emissions Trading System which to date has not delivered a sufficiently high and stable carbon price to encourage the investment in low-carbon technology the UK needs to meet its legal obligations.

7.2 Budget 2012 announced some changes to the price floor, including that, to incentivise CHP, supplies of fossil fuels to CHP stations would only be liable to the CPS rates where they are referable to the production of electricity in the station – fuels used to produce other outputs (mainly heat) would be exempt.

7.3 The carbon price floor will not apply in Northern Ireland. The exemption for Northern Ireland recognises concerns about the impact of the carbon price floor on energy security in Northern Ireland given the different market conditions that apply there as a result of the Single Electricity Market on the island of Ireland

7.4 This instrument will amend the existing excise relief for rebated oils used to generate electricity which was introduced with effect from 1 January 2006. The relief was introduced to avoid double taxation and ensure consistency of treatment with other energy products used for the same purpose. In particular, the amount of relief allowed will be reduced, the effect of which will be that oils used to generate electricity in an electricity generating station or CHP station will become subject to CPS rates of fuel duty from 1 April 2013. In addition, oils used in a CHP station that is registered under the CHP Quality Assurance (CHPQA) programme to generate non-electricity outputs will be exempt from the CPS rates of fuel duty from the same date.

- ***Consolidation***

7.5 There is no intention to consolidate the amendments that have been made to the principal Regulations.

8. Consultation Outcome

8.1 A consultation on the introduction of a carbon price floor was published on 16 December 2010 and the results of the consultation were published on 30 March 2011.

8.2 As a result of continuing consultation throughout 2011 and 2012, a number of changes and clarifications were announced to the carbon price floor in December 2012, in particular to incentivise CHP. CHP stations registered under the CHPQA Programme which burn oils will continue to be able to claim relief from fuel duty on the relevant fraction of oils supplied to them. This relief will be reduced by the amount of the relevant CPS rate of fuel duty in relation to the quantity of oil used to generate electricity. The proportion of the fuel input that is used to generate electricity will be calculated using the established boiler displacement method and will be shown on the station's CHPQA certificate.

8.3 The draft primary and secondary legislation relating to the carbon price floor was published in draft on 11 December 2012. No comments were made in relation to this instrument.

9. Guidance

9.1 Public Notice 175, available on www.hmrc.gov.uk, will be updated in spring 2013 to take account of the changes being introduced by this instrument.

10. Impact

10.1 Around 40 electricity generators, including CHP stations, that use oil in electricity generation will incur CPS rates of fuel duty upon their fuel input. The total one-off familiarisation and IT costs and continuing administration burdens for the affected businesses are negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note (TIIN) covering the carbon price floor was published on 11 December 2012 alongside draft Finance Bill 2013 legislation and draft secondary legislation, including this instrument. This has been updated by a further TIIN as a result of changes to the impacts as a result of this instrument and both are available on the HMRC website from the following link: http://www.hmrc.gov.uk/thelibrary/tiins.htm.

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 The basis for the final decision on what action to take to assist small business is described in paragraphs 7.1 to 7.4 above, so no such action is taken for this general tax provision.

12. Monitoring and Review

12.1 Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Excise, Environmental Taxes and Customs Directorate of HMRC.

13. Contact

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