

2005 No. 3320

EXCISE

**The Hydrocarbon Oil Duties (Reliefs for Electricity Generation)
Regulations 2005**

<i>Made</i> - - - -	<i>5th December 2005</i>
<i>Laid before Parliament</i>	<i>5th December 2005</i>
<i>Coming into force</i> - -	<i>1st January 2006</i>

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 20AA 1(a), (2)(a) to (e), (g) and (h) and (3) of the Hydrocarbon Oil Duties Act 1979(a) make the following Regulations:

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005.

(2) They come into force on 1st January 2006 and have effect in relation to any qualifying oil used to produce electricity in a generating station or combined heat and power station on or after that date.

Interpretation

2. In these Regulations —

“annual operation” means a period commencing on 1st January and finishing on 31st December;

“auto-generator” has the meaning given by paragraph 152 of Schedule 6 to the Finance Act 2000(b);

(a) 1979. c. 5; section 27(3) applies the definition of “the Commissioners” in section 1(1) of the Customs and Excise Management Act 1979 (c. 2), namely “the Commissioners” means the Commissioners of Customs and Excise. Section 1(2) of the Hydrocarbon Oil Duties Act 1979 defines “hydrocarbon oil”. Section 20AA was inserted by section 2(1) of the Finance Act 1989 (c. 26) and amended by Part 1(4) of Schedule 23 to the Finance Act 1993 (c. 34), paragraph 54 of Schedule 4 to the Finance Act 1994 (c. 9) and section 10(3) of the Finance Act 2000 (c. 17). The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(b) 2000 c. 17.

“combined heat and power station” has the meaning given by paragraph 148(1) of Schedule 6 to the Finance Act 2000;

“exempt unlicensed electricity supplier” has the meaning given by paragraph 14(4) of Schedule 6 to the Finance Act 2000;

“fully exempt combined heat and power station” has the meaning given by paragraph 148(2) of Schedule 6 to the Finance Act 2000;

“partly exempt combined heat and power station” has the meaning given by paragraph 148(3) of Schedule 6 to the Finance Act 2000;

“qualified claimant” means a person who causes qualifying oil to be used to produce electricity in a generating station or combined heat and power station;

“qualifying oil” means heavy oil on whose delivery for home use rebate has been allowed under section 11(1) of the Hydrocarbon Oil Duties Act 1979(a);

“relevant duty” means the duty charged on qualifying oil by section 6(1) of the Hydrocarbon Oil Duties Act 1979(b) less any rebate that has been allowed by section 11(1) of that Act.

PART 2

RELIEF

Relief

3.—(1) Relief is allowed in accordance with these Regulations if a quantity of qualifying oil has been used to produce electricity in a—

- (a) generating station;
- (b) fully exempt combined heat and power station; or
- (c) partly exempt combined heat and power station.

(2) Except where paragraph 3 applies, no relief shall be allowed where qualifying oil has been used to produce electricity—

- (a) by an auto-generator;
- (b) by an exempt unlicensed electricity supplier.

(3) This paragraph applies where the electricity produced has been used to make supplies of a description falling within regulation 41 of the Climate Change Levy (General) Regulations 2001(c) (supplies by non-registrable electricity producer to an electricity utility).

(4) No relief is allowed in respect of any relevant duty that is the subject of any other application or claim for repayment, remission or drawback.

Form of relief

4. The relief shall be in the form of a repayment by the Commissioners to the qualified claimant.

(a) 1979 c. 5; amended by section 2(2) of the Finance Act 1986 (c. 41), section 5(2) of the Finance Act 1996 (c. 8), section 7(5) of the Finance Act 1997 (c. 16), section 2(3) of the Finance Act 1999 (c. 16), section 4(2) of the Finance Act 2000 (c. 17), section 5(1) of the Finance Act 2003 (c. 14), section 5(3) of the Finance Act 2004 (c.12) and sections 4(7) and 5(6) of the Finance Act 2005 (c. 7).

(b) Section 6(1) was amended by section 4(2) of the Finance Act 1982 (c. 39). Section 6(1) was amended and section 6(1A) inserted by section 7 of the Finance Act 1997 (c. 16). Section 6(1A) was amended by sections 4(1) and 5(3) of the Finance Act 2000 (c. 17), section 1(1) of the Finance Act 2001 (c. 9), section 4(1) of the Finance Act 2003 (c. 14), sections 5(1) and 7(5) of the Finance Act 2004 (c. 12) and sections 4(2) and 5(2) of the Finance Act 2005 (c. 7).

(c) S.I. 2001/838, amended by S.I. 2003/604; there are other amending instruments but none is relevant.

PART 3
ELECTRICITY PRODUCED IN A GENERATING STATION

Application of Part 3

5. This Part applies to relief allowed by regulation 3(1)(a).

Amount of relief

6. The amount that is allowed is the amount of relevant duty that has been charged and paid.

Application for relief

7.—(1) Relief is allowed only upon the written application of a qualified claimant.

(2) Except as the Commissioners may otherwise allow, each application shall contain the particulars specified in paragraphs (a) to (e) of the Schedule and shall be in such form as the Commissioners may direct.

8. An application—

- (a) must be made no later than three months after the period to which they relate and that period must not be shorter than one month nor longer than three years; and
- (b) may not be made where the relief claimed is less than £50.

PART 4
**ELECTRICITY PRODUCED IN A COMBINED
HEAT AND POWER STATION**

Application of Part 4

9.—(1) This Part applies to relief allowed by regulation 3(1)(b) or (c) above.

(2) In this Part qualifying oil used to produce—

- (a) heat and electricity; or
- (b) heat, mechanical power and electricity

shall be treated as used to produce electricity.

Amount of relief

10.—(1) Except where paragraph (2) applies, the amount that is afforded is the amount of relevant duty that has been charged and paid on qualifying oil used to produce electricity in the annual operation to which the application relates. Where the efficiency percentage of the station is less than the threshold efficiency percentage of that station, the amount that is afforded is the relevant fraction of the relevant duty that has been charged and paid.

(2) For the purposes of paragraph (1) the relevant fraction is the fraction—

- (a) whose numerator is the efficiency percentage for the station; and
- (b) whose denominator is the threshold efficiency percentage for that period.

(3) For the purposes of this regulation—

- (a) A station's threshold efficiency percentage shall be 20 per cent.
- (b) A station's efficiency percentage is its power efficiency, as stated in its CHPQA certificate.

- (c) CHPQA has the meaning given in regulation 2 of the Climate Change Levy (Combined Heat and Power Stations) Regulations 2005^(a).
- (d) CHPQA certificate means a certificate issued in respect of a combined heat and power station following assessment of the station against criteria set out in the CHPQA.

Application for relief

11.—(1) Relief is allowed only upon the written application of a qualified claimant.

(2) Except as the Commissioners may otherwise allow, each application shall contain the particulars specified in paragraphs (a) to (g) of the Schedule and shall be in such form as the Commissioners may direct.

(3) Applications for relief must be made in respect of an annual operation.

(4) An application must be made no later than nine months after the annual operation to which it relates and may not be made where the amount to be paid is less than £50.

PART 5

CONDITIONS SUBJECT TO WHICH RELIEF IS ALLOWED

Cancellation of relief

12.—(1) If there is a failure to comply with any condition imposed by or under regulations 13 or 14, the relief allowed shall be cancelled.

(2) Where any relief is cancelled, any person who is a qualified claimant in relation to the application for relief shall, on demand, be liable to repay the amount of the relief.

General conditions

13.—(1) Relief is allowed subject to the following conditions.

(2) The qualified claimant must, if so required by the Commissioners, provide to their satisfaction evidence that—

- (a) the qualifying oil that is the subject of the application for relief has been used to produce electricity; and
- (b) the relevant duty that is the subject of the application for relief has been paid and is not the subject of any other application or claim for repayment, remission or drawback.

(3) The qualified claimant must, if required to do so, permit an officer to inspect any generating station or combined heat and power station in which he has caused qualifying oil to be used to produce electricity.

(4) The amount of the relief applied for must not exceed the amount of relief that may be allowed by regulation 3.

Conditions imposed by the Commissioners

14. Relief is allowed subject to such conditions (if any) as the Commissioners impose on a qualified claimant.

Dave Hartnett
Mike Eland

Two of the Commissioners for Her
Majesty's Revenue and Customs.

5th December 2005

(a) S.I. 2005/1714.

SCHEDULE

Regulations 7(2) and 11(2)

Particulars to be contained in application

- (a) The name and address of the qualified claimant;
- (b) the period to which the application relates;
- (c) the amount of qualifying oil used in that period in each generating station, or combined heat and power station, in which the qualified claimant has caused qualifying oil to be used to produce electricity;
- (d) the address of each such station;
- (e) the amount of the claim;
- (f) a copy of the CHPQA certificate;
- (g) a copy of the certificate given by the Secretary of State under paragraph 148(4) or (5) of Schedule 6 to the Finance Act 2000 (full-exemption and part-exemption certificates in respect of combined heat and power stations for the purposes of climate change levy).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st January 2006, introduce a relief from excise duty for rebated heavy oils used to generate electricity in a generating station or combined heat and power station. Relief is allowed on the written application of a qualified claimant, as defined in regulation 2.

Regulation 3 sets out the scope of the relief. It provides that electricity generated by auto-generators and exempt unlicensed electricity suppliers (as defined in regulation 2) will only be eligible for relief if the electricity has been used to make supplies of a description falling within regulation 41 of the Climate Change Levy (General) Regulations 2001^(a) (supplies by non-registrable electricity producer to an electricity utility).

Regulation 4 provides that the relief shall be in the form of a repayment.

Part 3 of the Regulations applies to qualifying oil used to produce electricity in a generating station. Regulation 6 provides the amount of the relief and regulations 7 and 8 describe how applications for relief are to be made.

Part 4 of the Regulations applies to qualifying oil used to produce electricity in a fully or partly exempt combined heat and power station and provides that the relief is limited to the amount of oil burnt in a good quality CHP. Regulation 10 provides the amount of the relief and regulation 11 provides how applications for relief are to be made. The amount of any relief will depend on the ratio between a station's efficiency percentage and its threshold efficiency percentage. Regulation 10(3)(a) provides that a station's threshold efficiency percentage shall be 20%. Regulation 10(3)(b) provides that a station's efficiency percentage in relation to a given annual operation is to be determined in accordance with methodology described in detail in the Combined Heat and Power Quality Assurance Standard, Issue 1, November 2000 originally published by the Department for the Environment, Transport and the Regions^(b).

Part 5 of the Regulations provides the conditions under which the relief is granted. Regulation 12 requires the repayment of any relief where there is contravention of, or failure to comply with, any condition. Regulation 13 imposes general conditions and regulation 14 provides for the imposition of further conditions on qualified claimants by the Commissioners.

This instrument gives effect to Articles 14(1)(a) and 15(1)(c) of Council Directive 2003/96/EC^(c) (of 27th October 2003 restructuring the Community framework for the taxation of energy products and electricity) in respect of energy products used to produce electricity. A transposition note for the directive is available at www.hmrc.gov.uk.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business, charities or voluntary bodies is available at www.hmrc.gov.uk.

(a) S.I. 2001/838, amended by S.I. 2003/604; there are other amending instruments but none is relevant.

(b) The Standard and Guidance Notes are available at <http://www.chpqa.com> or free of charge from the Action Energy Helpline (0800 585 794) or the CHPQA Administrator (0870 190 6196).

(c) OJ No L.283, 31.10.03, p.51.

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