EXPLANATORY MEMORANDUM TO

THE EXCISE DUTIES (SURCHARGES OR REBATES) (HYDROCARBON OILS ETC.) ORDER 2011

2011 No. 2904

1. Introduction

This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the Statutory Instrument

This instrument, which comes into force on 1 January 2012, adjusts the liabilities to excise duty (and, where applicable, the rights to rebate in respect of such duty) in respect of liquid fuels that are chargeable by virtue of the Hydrocarbon Oil Duties Act 1979 (c.5) ("the Oil Act"). In particular, the purpose of this instrument is to negate, temporarily, the effect of the increases in duty provided for by section 20 of the Finance Act 2011 (c.11) ("the Finance Act") in relation to those fuels.

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

3.1 None.

4. Legislative Context

The Regulator Act

4.1 This instrument has been made by the Treasury in exercise of their powers under sections 1(2) and 2(3) of the Excise Duties (Surcharges or Rebates) Act 1979 (c. 8) ("the Regulator Act"). The Regulator Act consolidated the provisions of section 9 of, and Schedules 3 and 4 to, the Finance Act 1961 (c. 36), with the provisions amending them.

4.2 In summary, the Regulator Act provides the Treasury with the power, by order made by statutory instrument, to provide for an adjustment (an increase or decrease) of any liability to certain excise duties (or of any right to drawback, rebate or allowance in respect of such duties) by up to 10 per cent. Such an order ceases to be in force at the expiration of a period of one year from the date on which it takes effect, unless continued in force by a further order.

4.3 As first enacted in 1961 and in the consolidating statute of 1979, the Treasury could exercise the power only if "it appears to the Treasury that it is expedient, with a view to regulating the balance between demand and resources in the United Kingdom…" (hence the power is sometimes referred to as the "economic regulator"). Further, the adjustment, if made, had to be of every liability to duty within a group or

groups of excise duties cited in the Regulator Act. However, the Regulator Act has been amended by section 10 of the Finance Act 1980 (c. 48), section 10 of the Finance Act 1982 (c. 39) and section 11(4) of the Finance Act 1993 (c. 34) to provide for greater flexibility. In particular, the use of the power is no longer limited by the words quoted above and the Treasury may now provide for the adjustment, by up to 10 per cent, of any liability to duty (or right to rebate) to which the Regulator Act applies, and may specify different percentages for different cases.

4.4 It is important to note that the power does **not** permit the Treasury to adjust the actual rates of duty or make textual amendments to the Oil Act or any other primary legislation (see section 1(2) to (4) of the Regulator Act). The rates are to do with the charge to duty, which is set by the relevant primary legislation. The enabling power only allows an adjustment to be made to the liability to duty (or rebate etc), which is made "where the duty becomes due while the order is in force with respect to it" (see section 1(3) and (4) of the Regulator Act). In other words, the adjustment is made when the duty is payable, not when it is chargeable. The rates of duty and rebate that are affected by the order remain unchanged, and are set out in the relevant primary legislation. The effect of the order is that the rates set in the relevant primary legislation are charged, but then the actual liability to pay the duty (or claim a rebate, as the case may be) is adjusted.

4.5 In the case of rebated fuels, when calculating the sums due before and after the adjustment, it is important to note what section 1(4) of the Regulator Act says about the adjustment of a rebate: "in calculating the amount to be adjusted any adjustment under this section of the liability to the duty shall be disregarded". Or to put it another way, the rebate "bites" on the underlying rate of duty that is set in the Oil Act and the adjusted rebate will also bite on the underlying rate of duty that is set in the Oil Act.

The Oil Act

4.6 Section 20 of the Finance Act amended the Oil Act so as to increase the effective rates of duty, with effect from 1 January 2012. The result of the adjustments made by this instrument is that, while the rates of duty (and rebate) are as set by section 20 of the Finance Act, a person will be entitled to adjust the amount he is actually required to pay by the amounts set out in this instrument: he will be liable to pay the same amount as if section 20 of the Finance Act had not come into force. In order to understand exactly how this result is achieved, it is first necessary to understand the structure of the Oil Act, which has been amended many times.

4.7 Hydrocarbon oil[1] is either "heavy oil" or "light oil"[2]. Section 6(1) of the Oil Act provides that there shall be charged on hydrocarbon oil imported into the United Kingdom, or produced in the United Kingdom, a duty of excise at the rates specified in section 6(1A)[3]. There are rebates of duty or differential rates of duty for various types of hydrocarbon oil.

[1] A term defined in section 1(2) of the Oil Act.
[2] See section 1(3) and (4) of the Oil Act.
[3] Section 6(1A) of the Oil Act was last amended by sections 19(2) and 20(2) of the Finance Act 2011 (c. 11).

4.8 Section 6(1A) of the Oil Act provides for four separate rates of duty on hydrocarbon oil in respect of unleaded petrol, light oil other than unleaded petrol, aviation gasoline and heavy oil. For convenience, in this memorandum these are termed the "base rates" for hydrocarbon oils. All types of hydrocarbon oil will fall within one of these categories and, prima facie, will be chargeable at one of the rates specified.

4.9 Section 6AA of the Oil Act[4] provides for a duty of excise to be charged on certain uses of "biodiesel"[5]. In short, those chargeable uses are use as motor fuel. Section 6AB of the Oil Act[6] provides for a duty of excise to be charged on "bioblend" (which is a mixture of biodiesel and any heavy oil). The rate of duty charged in respect of any particular mixture of bioblend is a composite rate calculated by reference to the duty that would have been chargeable on its constituent parts. Thus, any amendments to the rates of duty in respect of biodiesel or any of the heavy oils feed through to affect the duty payable in respect of bioblend.

4.10 Similarly, section 6AD of the Oil Act[7] provides for a duty of excise to be charged on certain uses of "bioethanol"[8]. As with biodiesel, the chargeable uses are, in effect, uses as motor fuel. Section 6AE of the Oil Act[9] provides for a duty of excise to be charged on "bioethanol blend" (which is a mixture of bioethanol and hydrocarbon oil). The rate of duty charged in respect of any particular mixture of bioethanol blend is a composite rate calculated by reference to the duty that would have been chargeable on its constituent parts. Thus, any amendments to the rates of duty in respect of bioethanol or any of the hydrocarbon oils feed through to affect the duty payable in respect of bioethanol blend.

4.11 Article 3 of the instrument adjusts all the liabilities to duty on the fuels described by paragraph 4.9 to 4.11 above, by the deduction of the percentage specified in each case.

4.12 Section 6A of the Oil Act[10] provides for a duty of excise to be charged on certain uses of certain liquids (commonly referred to as "fuel substitutes") that are not hydrocarbon oil, biodiesel, bioethanol, bioblend or bioethanol blend. The chargeable uses are, in effect, use as motor fuel. The precise rates of duty depend on the precise use to which the liquid is put (i.e. in what kind of engine it is used), and what hydrocarbon oil it might sensibly be said to be an additive or extender to, or a substitute for. Those rates are specified by Treasury order[11] by reference to the "base

[4] Inserted by section 5 of the Finance Act 2002 (c. 23), and last amended by section 12(3) of the Finance Act 2010 (c.13).
[5] For which, see section 2AA of the Oil Act, as inserted by section 5 of the Finance Act 2002 (c. 23).
[6] Inserted by section 5 of the Finance Act 2002 (c. 23).
[7] Inserted by section 10 of the Finance Act 2004 (c. 12), and last amended by section 12(5) of the Finance Act 2010.
[8] For which, see section 2AB of the Oil Act, as inserted by section 10 of the Finance Act 2004 (c. 12).
[9] Inserted by section 10 of the Finance Act 2004 (c. 12).
[10] Section 6A was added by section 11(1) of the Finance Act 1993 (c. 34) and amended by section 11 of the Finance Act 2000 (c. 17), section 7(1) of, and paragraph 2 of Schedule 2 to, the Finance Act 2002 (c. 23) and section 12 of the Finance Act 2004 (c. 12).
[11] S.I. 1995/2716, amended by S.I. 2002/3042, 2004/2062 and 2008/754.

rates" described above[12]. Article 5 of this instrument adjusts the liability to duty on fuel substitutes in line with the adjustments that are made to the "base rates".

4.13 There are further rebates of excise duty provided for by sections 11[13], 13ZA[14], 13AA[15], 14[16] and 14A[17] of the Oil Act. Those rebates are expressed in the Oil Act in such a way ("a rebate of duty at a rate of X a litre less than the rate at which the duty is charged") that the numbers expressed in sections 11(1) and 14(1) in the Oil Act are the effective rates of duty on those products. For example, in the case of the rebate allowed for light oil for use as furnace fuel, the number set by section 14(1) of the Oil Act is not the actual rebate, it is the effective rate of duty. The number is reset by section 20(5) of the Finance Act at £ 0.1126 per litre, with effect from 1st January 2012. So, with effect from 1 January 2012, light oil for use as furnace fuel is charged to duty at the rate then applicable to light oil other than unleaded petrol (see section 6(1A)(b) of the Oil Act), which is set by section 20(2)of the Finance Act as £ 0.7069 per litre. The amount of the rebate is £0.1126 less than the rate at which duty is charged: therefore, the rebate is £0.7069 – £0.1126 = £0.5943 pence a litre.

4.14 Article 4 of this instrument adjusts these rebates applicable with effect from 1 January 2012, by the addition to the amount allowable as rebate of the percentage specified in each case. The result is that the amount the person pays (the relevant "base rate" minus the relevant rebate) is reduced, and maintained at the level in force prior to 1 January 2012. For example, in the case of light oil for use as furnace fuel, the object of this instrument is to return to the position where a person would be liable to pay 10.70 pence per litre. Working backwards from the new rate at which the duty is charged (i.e. the light oil rate set by section 20(5) of the Finance Act), to reach an amount payable of £0.1070, the new adjusted rebate must be £0.7069 – 0.1070 = £0.5999. That is an increase of £0.5999 - £0.5943 = £0.0056 per litre, or 0.94% in the amount of the rebate. Please see row (e) of Table B to the instrument for this adjustment.

4.15 The Committee is respectfully referred to the instrument and its explanatory note for the precise rates of duty and rebate that would have obtained but for this instrument, the rates of duty and rebate that obtain as a result of this instrument, and the percentages by which each rate of duty or rebate is adjusted.

4.16 The powers conferred by the Regulator Act were exercised for the first time in August 2004, and since then have been exercised in December 2004, July 2005, December 2005, July 2006, December 2006, August 2008 and November 2008. The exercise of the powers was in response to the continuing uncertainty in the oils market in the period after the Budget. As with this instrument, the point of the exercise of

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[12] For example, a liquid chargeable under section 6A of the Oil Act and used as fuel in a diesel engine is charged to duty at the rate "specified by section 6 of the Act for heavy oil" – see Article 4(2)(a) of S.I. 1995/2716.

[13] Last amended by sections 19(4) and 20(4) of the Finance Act 2011.

[14] Section 13ZA was inserted by Finance Act 2008 (c.9), section 16, Schedule 6, paragraph 28.

[15] Section 13AA was inserted by section 5(4) of the Finance Act 1996 (c. 8) and amended by section 7(6) of the Finance Act 1997 (c. 16), sections 7(6) and 10(6) of the Finance Act 2004 (c. 12), section 4(8) of the Finance Act 2005 (c.7) and section 13(6) of the Finance Act 2008 (c.9).

[16] Last amended by sections 19(5) and 20(5) of the Finance Act 2011.

[17] Section 14A was inserted by the Finance Act 2008 (c.9), section 14, Schedule 5, paragraph 13 and last amended by sections 19(6) and 20(6) of the Finance Act 2011.

the Regulator Orders was to negate, temporarily, the effect of an increase in duty set in the Finance Act of that year.

4.17 Budget 2011 announced that the main fuel duty rates would increase by 3.02 pence per litre on 1 January 2012. To give effect to this decision, section 20 of the Finance Act amended the Oil Act to provide for those rates of excise duty to be increased with effect from 1 January 2012. The rates of rebate for the heavy oils that are not for road fuel and light oil for use as furnace fuel use were increased by the same percentage as main road fuels.

4.18 The decision to defer the 1 January 2012 increase in fuel duty to 1 August 2012 was announced by the Chancellor on 29 November 2011.

4.19 Therefore, this instrument makes the adjustments with effect from 1 January 2012. The adjustments "bite" on the rates that are provided for by section 20 of the Finance Act, as soon as those provisions come into force. The effect, in practical terms, is to reduce all the rates of duty and effective rates of duty on liquid fuels amended by section 20 of the Finance Act back to the levels that existed before section 20 of the Finance Act came into force.

4.20 The amounts payable in respect of the duties and rebates affected by this instrument will revert back to the levels provided for by section 20 of the Finance Act on 1 August 2012.

4.21 This instrument does not adjust the liability to duty of road fuel gas set by section 8 of the Oil Act (which has also been amended by section 20 of the Finance Act with effect from 1 January 2012). This liability is to be adjusted by means of regulations made by the Commissioners for Revenue and Customs under section 20AA of the Oil Act (the Excise Duties (Road Fuel Gas) (Reliefs) Regulations 2011, S.I. 2011/2905) for which a separate explanatory memorandum is laid before Parliament today.

5. Territorial Extent and Application

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

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

7.1 The rates of fuel duty were increased by the Finance Act as a result of the Chancellor of the Exchequer's Budget 2011. Main fuel duty rates were increased by 3.02 pence a litre and these and other related changes were to take effect on 1 January 2012.

7.2 The decision to defer the 1 January 2012 increase in fuel duty rates to 1 August 2012 was announced by the Chancellor on 29 November 2011.

- ***Consolidation***

There is no intention to consolidate.

8. Consultation Outcome

In line with the Government's Tax Consultation Framework, no consultation has been undertaken in relation to this instrument.

9. Guidance

Fuel duty rates are available on the HMRC website at www.hmrc.gov

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note (TIIN) covering this instrument will be published the HMRC website at 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 to keep to a minimum any new regulatory requirements as part of this change.

12. Monitoring and Review

The policy will be monitored through information collected from tax receipts.

13. Contact

Ann Little at HM Revenue and Customs, Tel: 020 7147 0383, e-mail: Ann.Little@hmrc.gsi.gov.uk can answer any queries regarding the instrument.