EXPLANATORY MEMORANDUM TO

THE EXCISE DUTIES (SURCHARGES OR REBATES) (HYDROCARBON OILS ETC.) ORDER 2012

2012 No. 3055

1. 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

2.1 This instrument, which comes into force on 1 January 2013, 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"). 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) in relation to those fuels until legislation to be introduced by the Finance Bill 2013 to amend the excise duty charged in respect of liquid fuels comes into effect. In practice this will mean that a person will not be liable to pay the increase in duty provided for by section 20 of the Finance Act 2011.

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

3.1 None.

4. Legislative Context

The Regulator Act

4.1 The Excise Duties (Surcharges or Rebates) Act 1979 (c. 8) ("the Regulator Act") provides the Treasury with the power, by order made by statutory instrument, to provide for an adjustment 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.

4.2 The rates of duty are set out in the Oil Act. The enabling power does not permit the Treasury to adjust the actual rate of duty; instead it allows an adjustment to be made to the liability to duty (or rebate etc). 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.

4.3 In the case of rebated fuels, when calculating the sums due before and after the adjustment, section 1(4) of the Regulator Act provides that: "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

4.4 Section 20 of the Finance Act 2011 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 2011, 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 2011 had not come into force.

4.5 The Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc.) Order 2011 (S.I. 2011/2904) made the same adjustments as made by this Order in relation to products that are charged with duty on or after 1st January 2012 and before 1st August 2012. Section 188 of the Finance Act 2012 provides that on or after 1st August 2012 but before 1st January 2013 the Oil Act has effect as if the amendments made by section 20 of the Finance 2011 had never been made.

4.6 The following is an explanation of how the adjustment works.

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). There are rebates of duty or differential rates of duty for various types of hydrocarbon oil.

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 provides for a duty of excise to be charged on certain uses of "biodiesel"[3]. In short, those chargeable uses are use as motor fuel. Section 6AB of the Oil Act 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.

[1] A term defined in section 1(2) of the Oil Act.
[2] See section 1(3) and (4) of the Oil Act.
[3] For which, see section 2AA of the Oil Act, as inserted by section 5 of the Finance Act 2002 (c. 23).

4.10 Similarly, section 6AD of the Oil Act provides for a duty of excise to be charged on certain uses of "bioethanol"[4]. As with biodiesel, the chargeable uses are, in effect, uses as motor fuel. Section 6AE of the Oil Act 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 4.8 to 4.10 above, by the deduction of the percentage specified in each case.

4.12 Section 6A of the Oil Act 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[5] by reference to the "base rates" described above[6]. 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, 13ZA, 13AA, 14 and 14A 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 2011 at £0.1126 per litre, with effect from 1st January 2012. So, with effect from 1st 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 2011 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 a litre.

4.14 Article 4 of this instrument adjusts these rebates applicable with effect from 1 January 2013, by the addition to the amount allowable as rebate of the percentage specified in each case. The result is that the amount the person

[4] For which, see section 2AB of the Oil Act, as inserted by section 10 of the Finance Act 2004 (c. 12).
[5] The Other Fuel Substitutes (Rates of Excise Duty etc.) Order 1995 (S.I. 1995/2716).
[6] 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.

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 2011), 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 decision to defer the 1 January 2012 increase in fuel duty to 1 August 2012 was announced by the Chancellor on 29 November 2011. The Chancellor announced in June 2012 a further deferral of the increases until 1 January 2013. On 5th December 2012, in the Autumn Statement 2012, the Chancellor announced that in practice the increases in duty provided for by section 20 of the Finance Act 2011 would not take place. Future increases, over the Parliament, will be implemented on 1 September each year instead of in April – including on 1 September 2013.

4.17 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 2012, S.I. 2012/3056) for which a separate explanatory memorandum is laid before Parliament.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 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 section 20 of the Finance Act 2011 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. As a result of the application of the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc.) Order 2011 (S.I. 2011/2904) and section 188 of the Finance Act 2012, there has been no liability to pay this increase.

7.3 The decision to continue not to apply this increase from 1st January 2013 was announced by the Chancellor on 5 December 2012.

7.4 This instrument negates the increases in fuel duty only temporarily, Finance Bill 2013 will introduce legislation to amend the rates of duty in the Oil Act.

- ***Consolidation***

There is no intention to consolidate.

8. Consultation Outcome

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

9. Guidance

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

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 on 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.

11.3 The basis for the final decision on what action to take to assist small businesses was that no additional regulatory requirement was imposed by this change which will benefit businesses, including small businesses, where fuel is part of the ongoing running costs.

12. Monitoring and Review

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

13. Contact

13.1 Catherine Mawer at HM Revenue and Customs, Tel: 020 7147 0655, e-mail: Catherine.Mawer@hmrc.gsi.gov.uk can answer any queries regarding the instrument.