EXPLANATORY MEMORANDUM TO

THE EXCISE DUTIES (SURCHARGES OR REBATES) (HYDROCARBON OILS ETC.) ORDER 2006

2006 No. 1979

1. 1.1 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.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

This instrument, which comes into force on 1st September 2006, 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 7 of the Finance Act 2006 (c.25) ("the Finance Act") in relation to those fuels.

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

3.1 The interaction of this instrument with the Oil Act (which has been amended numerous times) and with the changes made to the Oil Act by the Finance Act is complex.

The Regulator Act

3.2 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.

3.3 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.

3.4 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.

3.5 A consolidated text of the essential provisions of the Regulator Act (insofar as relevant to this instrument) is enclosed with this memorandum.

3.6 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.

3.7 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

3.8 Section 6 of the Finance Act amended the Oil Act so as to set the rates of duty and rebate applicable to fuels chargeable under the Oil Act. That section came into force on 19th July 2006. Section 7 of the Finance Act further amended the Oil Act so as to increase the effective rates of duty, with effect from 1st September 2006. The result of the adjustments made by this instrument is that, while the rates of duty (and rebate) are as set by section 7 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 7 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.

3.9 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 4 and 5(3) of the Finance Act 2000 (c. 17), section 1 of the Finance Act 2001 (c. 9), section 4 of the Finance Act 2003 (c. 14), sections 5 and 7 of the Finance Act 2004 (c. 12) and sections 4 and 5 of the Finance Act 2005(c.7).

3.10 Section 6(1A) of the Oil Act provides for six separate rates of duty on hydrocarbon oil in respect of sulphur-free petrol ("SFP")[4], ultra low sulphur petrol ("ULSP")[5], light oil other than ULSP and SFP, sulphur-free diesel ("SFD")[6], ultra low sulphur diesel ("ULSD")[7] and heavy oil other than ULSD and SFD. For convenience, in this memorandum these are termed the "base rates" for hydrocarbon oils. All types of hydrocarbon oil will fall within one of the six categories and, prima facie, will be chargeable at one of the rates specified.

3.11 Many of the other substances that are charged to duty under the Oil Act are charged at a rate that is parasitic upon the "base rates". For instance, section 6(3)[8] of the Oil Act provides that the rate of duty charged on "aviation gasoline"[9] shall be one half of the rate specified in section 6(1A)(b) in relation to light oil. Thus, the rate of duty in respect of aviation gasoline is changed every time the rate in relation to light oil is amended.

3.12 Section 13A[10] of the Oil Act provides for a rebate of excise duty in respect of unleaded petrol that is not ULSP or SFP. The effective rate of duty (that is, the amount payable after the relevant rebate is subtracted from the relevant rate) for unleaded petrol that is not ULSP or SFP is arrived at by deducting the rebate allowed by section 13A(1) of the Oil Act from the rate for light oil that is not ULSP or SFP set by section 6(1A)(b) of the Oil Act. Thus, amendment of the effective rate of duty in respect of unleaded petrol that is not ULSP is usually achieved by amending the rate of rebate in the light of any change that is also being made to the underlying rate in respect of light oil that is not ULSP.

3.13 Section 6AA of the Oil Act[11] provides for a duty of excise to be charged on certain uses of "biodiesel"[12]. In short, those chargeable uses are use as motor fuel. Section 6AB of the Oil Act[13] 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.

3.14 Similarly, section 6AD of the Oil Act[14] provides for a duty of excise to be charged on certain uses of "bioethanol"[15]. As with biodiesel, the chargeable uses are,

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[4] A term defined in section 1(3B) of the Oil Act, as inserted by section 7 of the Finance Act 2004 (c. 12).
[5] A term defined in section 1(3A) of the Oil Act, as inserted by section 5 of the Finance Act 2000 (c. 17) and substituted by section 7 of the Finance Act 2004 (c. 12).
[6] A term defined in section 1(7) of the Oil Act, as inserted by section 7 of the Finance Act 2004 (c. 12).
[7] A term defined in section 1(6) of the Oil Act, as inserted by section 7 of the Finance Act 1997 (c. 16), and substituted by section 8 of the Finance Act 1998 (c. 36) and by section 7 of the Finance Act 2004 (c. 12).
[8] Added by section 4 of the Finance Act 1982 (c. 39) and last amended by section 7 of the Finance Act 1997 (c. 16) and section 4(3) of the Finance Act 2005(c.7).
[9] A type of light oil; the term is defined in section 6(4) of the Oil Act, as inserted by section 4 of the Finance Act 1982 (c. 39).
[10] Section 13A of the Oil Act was inserted by section 1 of the Finance Act 1987 (c. 16) and last amended by section 5 of the Finance Act 2000 (c. 17), section 2 of the Finance Act 2001 (c. 9), sections 5 and 7 of the Finance Act 2004 (c. 12) and sections 4 and 5 of the Finance Act 2005 (c.7).
[11] Inserted by section 5 of the Finance Act 2002 (c. 23), and amended by section 4(2) of the Finance Act 2003 (c. 14), sections 5 and 11 of the Finance Act 2004 (c. 12) and sections 4 and 5 of the Finance Act 2005 (c.7).
[12] For which, see section 2AA of the Oil Act, as inserted by section 5 of the Finance Act 2002 (c. 23).
[13] Inserted by section 5 of the Finance Act 2002 (c. 23).
[14] Inserted by section 10 of the Finance Act 2004 (c. 12), and amended by sections 4 and 5 of the Finance Act 2005 (c.7).

in effect, uses as motor fuel. Section 6AE of the Oil Act[16] 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.

3.15 Article 3 of the instrument adjusts all the liabilities to duty on the fuels described by paragraph 3.9 to 3.14 above, by the deduction of the percentage specified in each case.

3.16 Section 6A of the Oil Act[17] 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[18] by reference to the "base rates" described above[19]. So, as with aviation gasoline, the liability to duty for fuel substitutes is parasitic upon the "base rates". Article 5 of this instrument adjusts the liability to this duty in line with the adjustments that are made to the "base rates".

3.17 There are further rebates of hydrocarbon oil duty provided for by sections 11[20], 13AA[21] and 14[22] of the Oil Act, in relation to what might best be described as non-road fuel use of hydrocarbon oils. 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 7(8) of the Finance Act at £ 0.0729 per litre, with effect from 1st September 2006. So, with effect from 1st September 2006, light oil for use as furnace fuel is charged to duty at the rate then applicable to light oil other than ULSP and SFP (see section 6(1A)(b) of the Oil Act), which is set by section 7(2) of the Finance Act as £

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[15] For which, see section 2AB of the Oil Act, as inserted by section 10 of the Finance Act 2004 (c. 12).
[16] Inserted by section 10 of the Finance Act 2004 (c. 12).
[17] 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).
[18] S.I. 1995/2716, amended by S.I. 2002/3042 and S.I. 2004/2062.
[19] 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 sulphur-free diesel" – see Article 4(2)(a) of S.I. 1995/2716.
[20] Relevant amendments were made to section 11 by section 2(2) and (3) of the Finance Act 1986 (c. 41), section 5 of the Finance Act 1996 (c. 8), section 7(5) of, and Part 1 of Schedule 18 to, the Finance Act 1997 (c. 16), section 10(2) of the Finance Act 2000 (c. 17), paragraph 3 of Schedule 2 to the Finance Act 2002 (c. 23), section 5(1) of the Finance Act 2003 (c. 14), sections 5(3) and 10(5) of the Finance Act 2004 (c. 12) and sections 4 and 5 of the Finance Act 2005(c.7).
[21] 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) and section 4(8) of the Finance Act 2005 (c.7).
[22] Relevant amendments were made by section 5(2) of the Finance Act 2003 (c. 14), section 5(5) of the Finance Act 2004 (c. 12) and sections 4 and 5 of the Finance Act 2005(c.7).

0.5768 per litre. The amount of the rebate is £0.0604 less than the rate at which duty is charged: therefore, the rebate is (£0.5768 – £0.0604 =) £ 0.5164 pence a litre.

3.18 Article 4 of this instrument adjusts these rebates applicable with effect from 1st September 2006, 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 September 1st 2006. 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 6.04 pence per litre. Working backwards from the new rate at which the duty is charged (i.e. the light oil rate set by section 7(2) of the Finance Act), to reach an amount payable of £0.0604, the new adjusted rebate must be (£0.5768 – 0.0729 =) £0.5039. That is an increase of (£0.5164 - £0.5039 =) £0.0125 per litre, or 2.48% in the amount of the rebate. Please see row (f) of Table B to the instrument for this adjustment.

3.19 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. Legislative Background

4.1 The powers conferred by the Regulator Act were exercised for the first time in August 2004, and then again in December 2004, July 2005 and December 2005. 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 the Regulator Orders was to negate, temporarily, the effect of an increase in duty set in the Finance Act of that year, in the light of the changed international market conditions since those provisions were enacted. The similar powers conferred by the Finance Act 1961 (as amended) were exercised on four occasions, most recently in December 1976.

4.2 In Budget 2006, the Chancellor said:

> "It is our policy that each year fuel duties should rise at least in line with inflation, as we seek to meet our targets for reducing emissions and to fund our public services. But for the fourth successive Budget, because of high and volatile prices in the oil market, I propose to defer the usual inflation increase until 1 September. I will maintain the duty differential for rebated oils." (Hansard; 22 March 2006, Column 295)

4.3 To give effect to this decision, section 6 of the Finance Act consolidated the effect of the Regulator Orders and revoked them with effect from 19th July 2006, so as to regularise the position in primary legislation. Section 7 of the Finance Act amended the Oil Act to provide for those rates of excise duty to be increased by an amount that reflected the rate of inflation with effect from 1st September 2006. For the "main" road fuels this was an increase of 1.25 pence per litre. The rates of rebate for the heavy oils that are not for road fuel and light oil for use as furnace fuel use were also increased by 1.25 pence per litre to maintain the differential between these rebated oils and the main road fuels as were the rates for biofuels.

4.4 On 18th July 2006, the Financial Secretary to the Treasury (Mr John Healey) gave the following answer to a written parliamentary question:

"The Chancellor of the Exchequer announced in the Budget that, because of continuing oil market volatility, the annual inflation-only increase in main fuel duties would be deferred until 1 September 2006.

Oil has been trading in recent weeks in a range of $66-$78 per barrel. The risk of oil price volatility remains high, and the Government will not therefore go ahead with the planned inflation-only increase in main road fuel duties on 1 September-and related increases for rebated oils, biofuels and road fuel gases-and will review the position again at the time of the pre-Budget report."(Hansard, Written Parliamentary Questions, 19 July 2006, Column 521W).

4.5 Therefore, this instrument makes the adjustments with effect from 1st September 2006. The adjustments "bite" on the rates that are provided for by section 7 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 7 of the Finance Act back to the levels that existed before section 7 of the Finance Act came into force.

4.7 If the instrument is revoked, or expires (for which see section 2(2) of the Regulator Act), the amounts payable in respect of the duties and rebates affected by this instrument will revert back to the levels provided for by section 7 of the Finance Act.

4.8 This instrument does not adjust the liability to duty of road fuel gas set by section 8 of the Oil Act (which have also been amended by section 7 of the Finance Act with effect from 1st September 2006). 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 2006, S.I. 2006/) for which a separate explanatory memorandum is laid before Parliament today.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The rates of fuel duty were increased by the Finance Act as a result of the Chancellor of the Exchequer's Budget 2006. main fuel duty rates were increased in line with inflation and these and other related changes were to take effect on 1st September 2006.

7.2 The delayed commencement was to due to sustained volatility in the oil market.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as no impact on business, charities or voluntary bodies is foreseen.

8.2 There is no impact on the public sector.

9. Contact

Tim Smith at the Transport Taxes Team, HM Revenue and Customs, 3E/01, 100 Parliament Street, London SW1 2BQ (tel: 020 7147 0573 or e-mail: timothy.smith@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

Annex A

Excerpt from the Excise Duties (Surcharges or Rebates) Act 1979, as amended

"1 Surcharges or rebates of amounts due for excise duties

(1) This section applies to the following groups of excise duties, namely…

(b) those chargeable by virtue of the Hydrocarbon Oil Duties Act 1979…

(2) The Treasury may, by an order applying to one or more of the duties to which this section applies, provide for an adjustment—

(a) of any liability to such a duty; and

(b) of any right to a …rebate …in connection with such a duty,

by the addition to or deduction from the amount payable or allowable of such percentage, not exceeding 10 per cent, as may be specified in the order.

(3) The adjustment under this section of a liability to duty shall be made where the duty becomes due while the order is in force with respect to it.

(4) The adjustment under this section of a right to any … rebate … in respect of a duty or goods charged with a duty shall be made where the right arises while the order is in force with respect to the duty (whenever the duty became due); but in calculating the amount to be adjusted any adjustment under this section of the liability to the duty shall be disregarded.

…

2 Orders under s 1

(1) The following provisions of this section shall have effect with respect to orders under section 1 above.

(2) An order shall cease 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.

(3) An order—

(a) may specify different percentages for different cases; but

(b) may not provide for both an addition to any amount payable and a deduction from any other amount payable.

…

(7) A statutory instrument containing an order which, —

(a) specifies a percentage by way of addition to any amount payable or increases a percentage so specified; or

(b) withdraws or reduces a percentage specified by way of deduction from any amount payable,

shall be laid before the House of Commons after being made; and unless the order is approved by that House before the expiration of twenty-eight days beginning with the date on which it was made, it shall cease to have effect on the expiration of that period, but without prejudice to anything previously done under it or to the making of a new order.

…

(8) A statutory instrument containing an order to which subsection (7) above does not apply shall be subject to annulment in pursuance of a resolution of the House of Commons."