EXPLANATORY MEMORANDUM TO THE

EXCISE WAREHOUSING (ENERGY PRODUCTS) REGULATIONS 2004 No. 2064

1. 1.1 This explanatory memorandum has been prepared by HM Customs and Excise and is laid before Parliament by Command of Her Majesty.

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

2. Description

2.1 This instrument provides for excise duty suspension arrangements in respect of "special energy product", such as biodiesel and petroleum gas. The regulations allow for the duty suspended warehousing of special energy product, which has not been set aside as motor or heating fuel on production or importation.

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

3.1 This instrument is made under a combination of the powers set out in the preamble to the instrument. The main powers exercised are those set out in section 23C of the Hydrocarbon Oil Duties Act 1979 (c. 5) ("the Oil Act"). Section 23C of the Oil Act was inserted by section 13 of the Finance Act 2004 (c. 12). That power enables the Commissioners, to make warehousing regulations under section 93 of the Customs and Excise Management Act 1979[1] (c. 2) ("CEMA") in relation to what are called "special energy product" in the instrument (a term defined in regulation 2).

3.2 Since the point of the power in section 23C of the Oil Act is to enable the Commissioners to bring the special energy products within the existing warehousing system that is provided for by several regulations made under section 93 CEMA, the instrument is best viewed as a joint exercise of section 23C of the Oil Act and section 93 CEMA. The exceptions are as follows.

3.2.1 Regulation 5(3) is solely an exercise of the power contained in section 23C(3)(a) of the Oil Act.

3.2.2 Regulation 6 is solely an exercise of the powers contained in sections 100G(1) and 100H(1)(b), (c), (d), (g), (k), (m) and (2) of CEMA[2].

3.2.3 Regulation 7 is also an exercise of the powers contained in section 21(1), (2) and (2A) of, and paragraphs 3, 11, 19 and 25 of Schedule 3 to, the Oil Act[3].

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[1] Relevant amendments were made to section 93 by paragraph 2 of Schedule 8 to the Finance Act 1981 (c. 35), paragraphs 3 to 7 of Schedule 3 to the Finance Act 1986 (c. 41), section 9(2) of the Finance Act 1988 (c. 39), paragraph 2 of Schedule 2 to the Finance (No. 2) Act 1992 (c. 48) and paragraph 3 of Schedule 4 to the Finance Act 1994 (c. 9).

[2] Sections 100G and 100H were inserted by Schedule 4 to the Finance Act 1991 (c. 31) and relevant amendment was made to section 100H by paragraph 6 of Schedule 1 to the Finance (No. 2) Act 1992 (c. 48).

[3] Section 21 was amended by Part 1(4) of Schedule 23 to the Finance Act 1993 (c. 34), paragraph 55 of Schedule 4 to the Finance (No. 2) Act 1992 (c. 48) and section 5(3) of the Finance Act 2004 (c. 12). Paragraph 11 of Schedule 3 was amended by paragraph 4 of Schedule 4 to the Finance Act 1985 (c. 54

4. Legislative Background

4.1 Council Directive 2003/96/EC[4] (of 27th October 2003 restructuring the Community framework for the taxation of energy products and electricity, commonly known as "the Energy Products Directive" or "EPD") revoked and replaced two previous directives that harmonised the structures of excise duties on mineral oils and other products that might be substitutes for them. Most of the provisions in the EPD relating to motor and heating fuels were already implemented in UK law by the Oil Act (and legislation made under the Oil Act) and by UK legislation that provides for the climate change levy. The main change was that Article 20 of the EPD brings several new energy products (what are termed "the special energy products" by this instrument) within existing duty suspension arrangements and allows the duty-suspended free movement of these products within the Community.

4.2 The energy products, which are now subject to duty suspension arrangements, include a range of animal and vegetable oils, biodiesel and petroleum gas intended for use as motor or heating fuel. All of these products have a potential to be used as motor or heating fuel.

4.3 Some of the products that the EPD requires to be within the duty-suspended system are not actually chargeable with excise duty in the UK, because the UK has taken advantage of various discretions provided for within the EPD. For instance, none of the "special energy products" are chargeable with duty in the UK if for heating use. Although duty is not charged in the UK arrangements must be made to enable the Community wide duty suspension system to work. For instance, if a person in another member State wishes to consign vegetable fat that is for heating use to the UK duty suspended (because otherwise he would be subject to taxation in his own member State) then he must be able to do so.

4.4 Within the UK, while no change to domestic duty rates was necessary to implement the EPD, legislative changes to accommodate the movement in duty suspension of some energy products not previously covered by duty suspension arrangements were necessary, and additional powers for the Commissioners in this regard were included in section 13 of the Finance Act 2004 (c. 12). Those powers are exercised in this instrument for the first time.

4.5 Various warehousing regulations have been made under section 93 CEMA in relation to goods that are chargeable with excise duty. This instrument ensures that those arrangements, with slight modifications to reflect the slightly unusual position of the special energy products, apply to the special energy products.

4.6 The Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004 (S.I. 2004/2065), which are laid with this instrument, provides for the administration and collection of the excise duties on all of the special energy products except petroleum gas and also of some other products that are charged to duty under the Oil Act.

4.7 A transposition note for the EPD can be found in the annex to this memorandum. The EPD was considered by the House of Commons European Scrutiny Committee on 27 November 2002[5] and cleared by sub-Committee A of the House of Lords Select

[4] OJ No L 283, 31.10.2003, p 51
[5] 2nd Report of Session 2002-03, HC 63-ii.

Committee on the European Union by letter dated 5 December 2002 to Dawn Primarolo, Paymaster General, HM Treasury[6].

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not Applicable.

7. Policy Background

7.1 These Regulations, dealing with new energy products such as biodiesel and petroleum gas, provide for the entry into duty suspension arrangements of such products that are actually or potentially chargeable with excise duty. This is intended to implement Article 20 of the EPD, as described in Section 4 above.

7.2 Although the introduction of these measures was announced in a Budget 2004 Notice, it has not specifically been raised in Parliament, nor has it had any media attention.

8. Impact

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

8.2 The impact on the public sector is nil.

9. Contact

9.1 Geoff Riley, in the Oils Team, Excise Group, HM Customs and Excise, 3rd Floor West, Ralli Quays Tel: 0161 827 0128 or email: geoff.riley@hmce.gsi.gov.uk can answer any queries regarding this instrument.

[6] Progress of Scrutiny, First Report for Session 2002-03, 9 December 2002, ISBN 010 490192 6.

ANNEX

Transposition Note for Council Directive 2003/96/EC (the "Energy Products Directive")

Articles	Objectives	Implementation	Responsibility
1	Member states to impose taxation on energy products in accordance with this Directive	This Directive replaces and repeals two earlier Council Directives and gives a unified framework to the treatment of motor and heating fuels. Many of the articles in this Directive are therefore already enacted in UK legislation. Where this is the case this transposition note records that no action is necessary. The Directive brings several new energy products within existing duty suspension arrangements and allows the duty suspended free movement of these products within the EU. No change to the scope of UK legislation, or rates of duties, was necessary to implement the EPD. The Directive introduces new energy products –biodiesel, animal and vegetable fats and methanol intended for use as motor or heating fuel – into duty suspension arrangements. Section 13 of the Finance Act 2004 inserted a new section on warehousing into the Hydrocarbon Oil Duties Act 1979 (the "Oil Act"), allowing the application of duty suspension arrangements to a range of new energy products. These regulations – "The Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004" and "The Excise Warehousing (Energy Products) Regulations 2004" – referred to in this document as "The Regulations", which will come into force on 1 September 2004, regulate the administration and collection of the excise duty charged on biofuels and other fuel substitutes and provide the means for warehousing the new energy products.	Economic Secretary to the Treasury – through new regulations.

Articles	Objectives	Implementation	Responsibility
2	Lists the products to which the Directive applies and provides conditions under which those products are taxed. Also lists products and uses of those products that the Directive does not apply to.	Existing UK legislation covers a wide range of these products and their taxable uses, divided between Climate Change Levy and Excise Duties on motor and heating fuels (both administered by Customs and Excise). The changes to UK legislation necessary to fully implement the Directive were limited to the inclusion of new energy products in duty suspension arrangements. Section 13 of Finance Act 2004 incorporated changes to the Oil Act bringing the new energy products into duty suspension arrangements. The Regulations provide the conditions under which these products may be warehoused and charged with duty.	As above Policy Responsibility is with Oils Team, Tax Practice, HM Customs & Excise, Ralli Quays, Salford.
2(3)	Ensures that the UK's taxation of energy products in respect of motor fuel substitutes, additives and extenders (other than biodiesel) complies with Community framework for taxation of energy products.	Section 6A of the Oil Act (and the Other Fuel Substitutes (Rates of Excise Duty Etc.) Order 1995, which is most recently amended by the Other Fuel Substitutes (Rates of Excise Duty Etc.) (Amendment) Order 2004) ensure that taxation of these products complies with the Energy Products Directive.	Economic Secretary to the Treasury – through new regulations. Policy responsibility is with Environmental Taxation Development Division, Policy Group, HM Customs & Excise, New Kings Beam House, London
3	Definitions	No action necessary	
4	Minimum levels of Taxation	No action necessary	
5	Differentiated levels of taxation allowed in particular circumstances	No action necessary	
6	Defines how exemptions and reductions may be given	No action necessary	
7	Implementation dates for minimum levels of taxation with particular reference to gas oil, public transport and road user charges	No action necessary	

Articles	Objectives	Implementation	Responsibility
8	Minimum levels of taxation appropriate to various industrial and commercial purposes such as agriculture and stationary motors	No action necessary	
9	Minimum taxation levels for heating fuel	No action necessary	
10	Minimum levels of taxation applicable to electricity	No action necessary	
11	Definition of "business use"	No action necessary	
12	Units of measurement	No action necessary	
13	Value of Euro in determining levels of taxation	No action necessary	
14	Range of exemptions	See below	
14(1)(a)	To exempt from taxation energy products used to produce electricity.	Part 7 of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004 provides relief for biofuels used as motor fuel in a generator to produce electricity.	Economic Secretary to the Treasury – through new regulations. Policy responsibility is with Environmental Taxation Development Division, Policy Group, HM Customs & Excise, New Kings Beam House, London
15	Range of exemptions allowable for particular purposes	No action necessary	
16	Range of exemptions and reduced tax rates for certain energy products, including products produced from biomass. Includes requirement for member states to inform the Commission of tax reductions and exemptions applied	No action necessary.	
17	Reduced levels of taxation for heating purposes	No action necessary	
18	Derogations – including expiry of certain derogations on 31 December 2006	No action necessary	
19	Commission powers to grant or revoke derogations	No action necessary	

Articles	Objectives	Implementation	Responsibility
20	Provides for which energy products are to be subject to duty suspension arrangements under Directive 92/12.	Section 13 of Finance Act 2004 incorporated changes to the Oil Act to enable the new energy products to be brought into existing duty suspension arrangements. The Regulations provide the conditions under which these products may be warehoused and charged with duty.	Economic Secretary to the Treasury – through new regulations. Policy Responsibility is with Oils Team, Tax Practice, HM Customs & Excise, Ralli Quays, Salford.
21	Provides for circumstances and events when duty charge is applicable	No action necessary	
22	Allows for tax increases to apply to energy products held in stock	No action necessary	
23	Allows for refunds on contaminated products sent back for recycling	No action necessary	
24	Prevents dual taxation of fuel used for transport between member states	No action necessary	
25	Requirement for annual report of levels of taxation on energy products	No action necessary	
26	Requirement to inform the Commission of measures taken in respect of Articles 5, 14(2), 15 and 17	No action necessary	
27	References to Decision 199/468/EC and adoption of Rules of Procedure	No action necessary	

Articles	Objectives	Implementation	Responsibility
28	Time limits for compliance with this Directive	The Energy Products Directive, 2003/96, came into force on 1 January 2004. The UK legislative timetable has meant that new provisions necessitated by the Directive were presented in the Finance Bill delivered by the Chancellor of the Exchequer to Parliament on 17 March 2004. Existing UK legislation already deals with the taxation of products used, or intended to be used, as motor or heating fuels. No changes to UK legislation were necessary to alter any charging provisions. However, changes were necessary to include the new energy products described in the Directive, in arrangements, to facilitate the duty suspended free circulation of these products. The Commission was aware that member States were unlikely to be able to implement the provisions of the Directive on time because of its late passage through the European Parliament (it was adopted on 27th October 2003 only a few months before it comes into effect). However, a letter of formal notice of infringement has been received. The Commission has been informed of the legislative process that the UK has undertaken and the Regulations accompanying this document fulfil the UK's obligations under the Directive.	
29	Periodic examination of exemptions and minimum levels of taxation	No action necessary	
30	Repeal of Directives 92/81 and 92/82	Reference to these Directives in UK legislation has been changed by section 14 of the Finance Act 2004.	Economic Secretary to the Treasury Policy Responsibility is with Oils Team, Tax Practice, HM Customs & Excise, Ralli Quays, Salford.

Articles	Objectives	Implementation	Responsibility
31	Date of entering into force	See comments at Article 28	
32	Directive addressed to Member States		
Annex I	Minimum levels of taxation applicable to motor fuels	No action necessary	
Annex II	Reduced rates and exemptions from taxation applicable to member states.	No action necessary	