EXPLANATORY MEMORANDUM TO

THE HYDROCARBON OIL DUTIES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2022

2022 No. 238

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 From 1 April 2022, the use of rebated diesel and rebated biofuels will be limited to specific accepted uses, when used in certain vehicles and machines. This instrument and the Hydrocarbon Oil Duties (Consequential Amendments and Transitional Provisions) Regulations 2022 make consequential amendments to regulations relating to hydrocarbon oils to complete the implementation of these changes. This instrument focuses on the changes in relation to biodiesel and fuel substitutes.

2.2 All changes take effect on 1 April 2022. Further details about these amendments are set out in section 7 below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The amendments made to the Hydrocarbon Oil and Biofuels (Road Fuel in Defined Areas) (Reliefs) Regulations 2011 (S.I. 2011/2935) by this instrument include the correction of a minor error. HMRC has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar on this matter and has not applied the free issue procedure on the basis that it would be disproportionate to do so given the nature of the sole correcting provision and the proportion that it represents of the whole instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument and the Hydrocarbon Oil Duties (Consequential Amendments and Transitional Provisions) Regulations 2022 are being made to complete the implementation of changes to restrict the use of rebated diesel and rebated biofuels to a limited number of accepted uses, when used in certain vehicles and machines, from

1 April 2022. Primary legislation setting out these changes is included in Finance Acts 2021 and 2022. This instrument makes consequential amendments to regulations related to hydrocarbon oils and takes effect from 1 April 2022.

6.2 The Hydrocarbon Oil Duties Act 1979 (HODA) covers United Kingdom (UK) law on the taxation of hydrocarbon oils, including diesel used on and off road. The Customs and Excise Management Act 1979 (CEMA) contains general provisions related to protection of revenue derived from excise duties, including inspection, entry and search powers, and the taking of documents. This instrument makes use of powers contained in both Acts to confer on the Commissioners for HMRC to make regulations:

- allowing reliefs of excise duty charged on hydrocarbon oils (section 20AA of HODA)
- amending requirements for registered dealers in controlled oil (section 23B of HODA)
- on the controlled use of duty free and rebated oil (section 24(1) of HODA)
- designating any fuel marker to identify a hydrocarbon oil (section 24A(3) of HODA)
- in connection with various subjects relating to section 24 of HODA (Schedule 4 to HODA), and
- allowing for the administration, collection or protection of revenues derived from excise duties (section 100G(1) of CEMA).

6.3 It was not possible to combine this instrument with the Hydrocarbon Oil Duties (Consequential Amendments and Transitional Provisions) Regulations 2022 as this instrument is subject to scrutiny by both Houses of Parliament, but the other regulations are subject to scrutiny by the House of Commons only.

7. Policy background

What is being done and why?

7.1 Motor and heating fuels are liable to fuel duty, with only fuel taxed at the full rate of fuel duty allowed to be used in road vehicles. Some oils and fuels are taxed at a lower (rebated) rate - historically because fuel duty was intended to be a tax on road vehicles. This includes gas oil (diesel), which is chemically marked and dyed to enable law enforcement agencies to identify it as rebated fuel and detect when the wrong sort of diesel is being used, providing a deterrent to fuel fraud. The colour of the dye in the UK means this fuel is called ‘red diesel’ (though marked fuel from other countries may be marked with a different colour). Gas oil intended for use in diesel engine road vehicles, otherwise known as ‘white diesel’ (because it has no marker or dye), has a fuel duty rate of 57.95 pence per litre (ppl). Rebated diesel is entitled to a rebate of 46.81ppl, giving it an effective duty rate of 11.14ppl.

7.2 At Budget 2020, the government announced that it would remove the entitlement to use rebated diesel and biofuels from most sectors, from April 2022. It consulted during 2020 to ensure that it had not overlooked any exceptional reasons why further sectors should be allowed to continue to use these fuels beyond April 2022.

7.3 At Spring Budget 2021 the government announced the final policy design of the changes, as set out in the summary of responses to the consultation. This included

restricting the use of rebated diesel and biofuels from 1 April 2022 to certain accepted uses as set out in the interim guidance.

7.4 The changes included in this instrument, along with those included in the Hydrocarbon Oil Duties (Consequential Amendments and Transitional Provisions) Regulations 2022, make changes to secondary legislation needed to supplement the primary legislation changes included in Finance Acts 2021 and 2022.

7.5 The changes extend fuel duty to biodiesel, bioblends and fuel substitutes used for heating, applying the rebated duty rate to biodiesel and diesel substitutes used for non-commercial heating and the full rate of duty when these fuels are used for commercial heating. This instrument makes consequential amendments to the control of rebated biodiesel, including:

- requiring it to be marked with a chemical marker and dye to allow for rebated biodiesel to be detected when not used in an excepted machine for an accepted use
- requiring the marking of biodiesel to be done at the excise duty point
- requiring that rebated biodiesel can only be supplied by a registered dealer in controlled oil, and
- extending the provisions relating to registered remote markers to include biodiesel.

7.6 The instrument also updates the definition of the 'Collector for Oils Accounting Centre' and extends the relief applied on road fuel in defined rural areas to non-rebated diesel and biofuels used in any vehicle, vessel, machine or appliance.

7.7 These tax changes will ensure that most current users of rebated diesel will use fuel taxed at the standard rate for diesel from April 2022, like motorists, which more fairly reflects the harmful impact of the emissions they produce. Restricting use of rebated diesel and biofuels, including marked oils, will also help to ensure that the tax system incentivises users of polluting fuels like diesel to improve the energy efficiency of their vehicles and machinery, invest in cleaner alternatives, or just use less fuel. This will contribute towards the UK's climate change and air quality targets.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate this instrument as it makes modest changes to several other instruments.

10. Consultation outcome

10.1 The government consulted on the changes to rebated fuel use in summer 2020 and published the summary of responses to the consultation at Spring Budget 2021. These are available on the website at: Consultation on reforms to the tax treatment of red diesel and other rebated fuels - GOV.UK (www.gov.uk).

10.2 The draft instrument was exposed to trade representative bodies affected by the changes between 25 January and 4 February 2022 and comments received were considered in finalising the instrument.

11. Guidance

11.1 HMRC has published interim guidance about the changes to rebated fuel use from 1 April 2022 and this guidance is available on website at: Changes to rebated fuels entitlement from 1 April 2022 - GOV.UK (www.gov.uk).

11.2 Excise public notices covering policy relating to rebated fuels will be updated and published to coincide with the introduction of the changes. They do not have the force of law.

12. Impact

12.1 There is no significant administrative impact on business, charities, or voluntary bodies. Fuel users from these sectors who will no longer be allowed to use rebated fuels and will need to use fully duty paid diesel and biofuels, which will increase their fuel costs.

12.2 There is no significant administrative impact on the public sector. Fuel users from this sector will no longer be allowed to use rebated fuels for all their operations and will need to use fully duty paid diesel and biofuels where they are unable to switch to cleaner technology, which will increase their fuel costs.

12.3 A Tax Information and Impact Note covering this instrument was published alongside Finance Bill 2021-22 and is available on the website at Changes to rebated diesel and biofuels from 1 April 2022 - GOV.UK (www.gov.uk). It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. This measure is expected to have a negligible impact on those small businesses no longer allowed to use rebated fuels who will need to use fully duty paid diesel, although it will increase their fuel costs.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was the consultation with affected sectors in the summer of 2020 (see paragraph 10.1).

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be undertaken through information collected on fuel duty and communication with affected sectors no longer allowed to use rebated fuels.

14.2 The instrument does not include a statutory review clause. It amends UK tax legislation and therefore falls within the exceptions at section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Priti Khatri at the HMRC Telephone: 03000 577065 or email: priti.khatri@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Judith Kelly, Deputy Director for Excise and Environmental Taxes at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Helen Whately MP, Exchequer Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.