EXPLANATORY MEMORANDUM TO

THE HYDROCARBON OIL (MARKING AND DESIGNATED MARKERS) (AMENDMENT) REGULATIONS 2023

2023 No. 1187

1. Introduction

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

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

2. Purpose of the instrument

2.1 The instrument makes changes to the fiscal markers that must be added to fuel to qualify for a reduced rate of excise duty (rebated fuel) or relieved of excise duty for industrial use other than as fuel. Specifically, the instrument:

(i) introduces a new marker, n-butyl phenyl ether, to update the UK fuel marking system at the same time as other jurisdictions, such as the EU;

(ii) reduces the required quantity of a current marker, Solvent Yellow 124, and allows for the use of specified alternative red dyes to make up the colouring substance for gas oil and biodiesel;

(iii) allows for the marking of oil in excess of specified proportions when manufacturing a concentrated composite marker; and

(iv) adds a requirement to evenly mix the markers into fuel.

2.2 The new marking requirements come into force on 18 January 2024. The instrument also allows for n-butyl phenyl ether to be added to rebated fuel from 1 December 2023, to facilitate the transition to using the new marker.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument amends another instrument which was, in part, made under section 2(2) of the European Communities Act 1972 – it amends regulation 15 of the Hydrocarbon Oil (Marking) Regulations 2002. No special procedural requirements arise from that, however. Paragraph 13 of Schedule 8 to the European Union Withdrawal Act 2018 previously imposed such a requirement, but that provision was repealed by section 10 of the Retained EU Law (Revocation and Reform) Act 2023.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom (UK).

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the UK.

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 The parent act is the Hydrocarbon Oil Duties Act 1979 (HODA) and the enabling power for these Regulations is in Sections 24 and 24A of, and Schedule 4 to, HODA. HODA legislates for the taxation of hydrocarbon oils in the UK, including defining the different types of oils, the excise duty charge, the rebate for heavy oils and associated penalties for misuse of rebated oils.

6.2 This instrument amends the Hydrocarbon Oil (Marking) Regulations 2002 which set out how, where and when fuel must be marked to qualify for a rebate of excise duty to add n-butyl phenyl ether. It also amends the Hydrocarbon Oil (Designated Markers) Regulations 1996 to add n-butyl phenyl ether to the list of markers which must not be present in fuel used in machines other than excepted machines.

7. Policy background

What is being done and why?

7.1 The Government has decided to introduce the new fiscal marker, n-butyl phenyl ether, for fuel taxed at a reduced duty rate. We have taken the opportunity to update our system at the same time as other jurisdictions, such as the EU. For example this also reflects the requirements of EU Council Directive 95/60/EC (Directive), and EU Commission Implementing Decision 2022/197/EU (Decision), which supplements the Directive and requires the introduction of n-butyl-phenyl ether.

7.2 This instrument amends the Hydrocarbon Oil (Marking) Regulations 2002 and the Hydrocarbon Oil (Designated Markers) Regulations 1996 to add the new marker from 18 January 2024.

7.3 In addition to introducing the new marker, the instrument retains as a UK marker Solvent Yellow 124, now referred to as “the general marker”, but halves the minimum quantity to be used. The instrument corrects a small error in the chemical name used to define coumarin. It also allows for specified alternative red dyes to be used with a reduced quantity of Solvent Red 24 in the colouring substance for rebated diesel and biodiesel, to help the colouring substance dissolve consistently in fuel. Dyes which may form part of the colouring substance are now identified using chemical names, rather than by reference to the Colour Index.

7.4 The instrument also allows for markers to be added to oil in excess of the prescribed quantity when manufacturing a concentrated composite marker and requires the even mixing of markers into fuel. Finally, to help businesses adapt to the changes and manage their stocks, it provides a transition period allowing businesses to add the new marker from 1 December 2023.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument amends the Hydrocarbon Oil (Marking) Regulations 2002 and the Hydrocarbon Oil (Designated Markers) Regulations 1996. There are currently no plans to consolidate amendments made to the Hydrocarbon Oil (Marking) Regulations 2002 or the Hydrocarbon Oil (Designated Markers) Regulations 1996.

10. Consultation outcome

10.1 There was no consultation on the decision to introduce a new marker in the UK. The new marker was adopted in line with other jurisdictions, including the EU, but marker manufacturers have been involved in the preparations for its implementation.

11. Guidance

11.1 The changes made by this instrument require an amendment to current guidance, which will be prepared in advance of the January 2024 implementation date.

11.2 Guidance on oils is available at https://www.gov.uk/government/collections/oils-notices. Anyone unable to access the notices electronically, may request a hard copy free of charge by contacting the Excise Helpline on 0300 200 3700.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 A small number of businesses who mark rebated fuel are affected by the changes. The addition of n-butyl phenyl ether is likely to result in a very small increase in the cost of the concentrated solution used to mark rebated fuel, which will be partly offset by the reduced amount of Solvent Yellow 124 required. The cost of the additional marker will be passed on through the supply chain to rebated fuel users but will have a negligible effect on the price per litre. There are no additional processes that arise as a result of this change as there are already existing processes, and existing legal requirements, for the marking of rebated fuel on release for home use.

12.3 There is no, or no significant, impact on the public sector.

12.4 A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business and the small number of businesses affected.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the changes made will be kept under review through communication with key stakeholders. There are no plans for an additional review period as HMRC already assesses the effectiveness of the current markers with input from user groups and other government departments.

15. Contact

15.1 Paul Hutton at HMRC, Telephone: 03000 587 764, or email: paul.hutton@hmrc.gov.uk can be contacted with any queries regarding the instrument.

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

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