

**EXPLANATORY MEMORANDUM TO THE
EXCISE DUTIES (SURCHARGES OR REBATES) (HYDROCARBON OILS ETC.)
ORDER 2004**

2004 No. 2063

1. 1.1 This explanatory memorandum has been prepared by HM Customs and Excise 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

2.1 This Order adjusts certain liabilities to excise duty 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 set out in sections 5 and 7 of the Finance Act 2004 (c. 12) (“the Finance Act”), which amends the Oil Act.

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

3.1 This Order is made using novel powers that are being exercised for the first time. Similar powers conferred by the Finance Act 1961 (as amended) were exercised on four occasions, most recently in December 1976. The interaction 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 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 Act”). The Act consolidated the provisions of section 9 of, and Schedules 3 and 4 to, the Finance Act 1961, with the provisions amending them.

3.3 In summary, the Act provides the Treasury with the novel 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 etc. 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, 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...”. Further, the adjustment, if made, had to be of every liability to duty within a group or groups of excise duties cited in the Act. However, the 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 Act applies, and may specify different percentages for different cases.

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

3.6 It is important to note that the power does **not** extend such as to allow the Treasury to adjust the actual rates of duty or the making of textual amendments to the Oil Act (or any other primary legislation) (see section 1(2) to (4) of the 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 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 When calculating the sums due before and after the adjustment, in the case of rebated fuels it is important to note what section 1(4) of the Act says about the adjustment of a rebate: “in calculating the amount to be adjusted any adjustment under this section of the liability to 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 Hydrocarbon oil¹ 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.

3.9 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.

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 section 4 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) and sections 5 and 7 of the Finance Act.

⁴ See section 7 of the Finance Act.

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.

⁶ See section 7 of the Finance Act.

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.

3.10 There are further rebates and allowances provided for in the Oil Act. However, these are mostly 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) 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.

3.11 Section 13A¹⁰ 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.

3.12 Section 6AA of the Oil Act¹¹ provides for a duty of excise to be charged on certain uses of “biodiesel”¹². In short, those chargeable uses are use as road fuel. Section 6AB of the Oil Act¹³ 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 bioblends.

3.13 Article 3 of the Order adjusts all the liabilities to duty on the road fuels described above, by the deduction of the percentage specified in each case.

3.14 Section 6A of the Oil Act¹⁴ provides for a duty of excise to be charged on certain uses of certain liquids that are not hydrocarbon oil (commonly referred to as “fuel substitutes”). Again, the chargeable uses are, in effect, uses as road fuel. The precise rates of duty depend on the precise use to which the liquid is put (i.e. what kind of engine), 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 Order¹⁵ (“the Principal Order”), by reference to the “base rates” described above¹⁶. So, as with aviation gasoline, the liability to duty for fuel substitutes is parasitic upon the “base

⁸ Added by section 4 of the Finance Act 1982 (c. 39) and last amended by section 7 of the Finance Act 1987 (c. 16).

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) and section 7 of the Finance Act.

¹¹ Inserted by section 5 of the Finance Act 2002 (c. 23).

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 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.

¹⁵ S.I. 1995/2716, amended by S.I. 2002/3042 and S.I. 2004/2062.

¹⁶ 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 ultra low sulphur diesel” – see Article 4(2)(a) of S.I. 1995/2716, as amended by S.I. 2002/3042.

rates”. Article 5 of this Order adjusts the liability to this duty in line with the adjustments that are made to the “base rates”. Please note that the underlying rates of duty for these substances are amended by the Other Fuel Substitutes (Rates of Excise Duty etc.) (Amendment) Order 2004¹⁷ (“the Amending Order”) with effect from the 1st September 2004, in any event. So the adjustments made by this Order operate on the rates prescribed by the Principal Order, as amended by the Amending Order. For more on the Amending Order, please see the Order itself and its explanatory memorandum.

3.15 There are further rebates of hydrocarbon oil duty provided for by sections 11¹⁸, 13AA¹⁹ and 14²⁰ 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 section 11(1) and 14(1) in the Oil Act are the effective rates of duty on those products. Article 4 of this Order adjusts these rebates 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.

3.16 For example, in the case of the rebate allowed for light oil used as furnace fuel (see section 14(1) of the Oil Act), the number set (formerly 3.82 pence) is not the actual rebate, it is actually the effective rate of duty. The number is re-set by the Finance Act at 6.24 pence. The object of the Order is to return to the position where a person would be liable to pay 3.82 pence per litre. Working backwards from the new rate at which the duty is charged (i.e. the light oil rate set by the Finance Act), the rebate is (£0.5790 – £0.0624 =) £0.5166. The application of a rebate of £0.5166 to the rate of £0.5790 gives an amount payable of £0.0624. To reach the amount payable of £0.0382, the new rebate must be (£0.5790 – 0.0382 =) £0.5408. That is an increase of (£0.5408 - £0.5166 =) £0.0242, or 4.68% in the amount of the rebate.

3.17 The Committee is respectfully referred to the Order and its explanatory note for the precise rates of duty and rebate that would have obtained but for this Order, the rates of duty and rebate that obtain as a result of this Order, and the percentages by which each rate of duty or rebate is adjusted.

4. Legislative Background

4.1 The powers conferred by the Act have not been exercised before. The similar powers conferred by the Finance Act 1961 (as amended) were exercised on four occasions, most recently in December 1976.

4.2 Section 5 of the Finance Act amended the Oil Act to provide for the rates of excise duty on hydrocarbon oil to be increased by an amount that reflected the rate of inflation (although see what is said below re: the rates for ULSD and ULSP) from 1

¹⁷ S.I. 2004/2062.

¹⁸ 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) and sections 5(3) and 10(5) of the Finance Act.

¹⁹ 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) and section 7(6) of the Finance Act.

²⁰ Relevant amendments were made by section 4(2) of the Finance Act 2003 (c. 14) and section 5(5) of the Finance Act.

September 2004. For most rebated oils (rebated fuel oil, light oil used as furnace fuel, rebated gas oil, ULSD and kerosene) the effective rate of duty (that is, the amount payable after the relevant rebate is subtracted from the relevant rate) was increased by 1 penny per litre above the increase that would have applied simply to uprate in line with inflation. The effective rate of duty for unleaded petrol was uprated in line with inflation.

4.3 Section 7 of the Finance Act amended the Oil Act to provide for new rates of duty for SFP and SFD. The rates were set at what would have been the revalorised rates for ULSP and ULSD. The duty rates for ULSP and ULSD are increased with effect from 1 September in line with inflation plus half a penny per litre.

4.4 In Budget 2004, the Chancellor said that while the oil industry was preparing for the introduction of “sulphur-free” fuels on 1 September 2004, he would “delay for the second year running the annual rise in fuel duty for nearly six months”. Thus, the amendments made by sections 5 and 7 of the Finance Act all come into effect on 1 September 2004.

4.5 After the OPEC meeting in Beirut of 3 June 2004, the Chancellor of the Exchequer said that the Government planned to review progress in the level of oil prices in August and to decide then whether or not to continue with the duty increase planned for 1 September.

4.6 On 20 July 2004, the Economic Secretary to the Treasury gave the following response to a parliamentary question from Jackie Lawrence MP (Official Report, 20 July 2004, Column 189W):

“On 3 June, in recognition of the pressures in the oil market and because of a shortage of oil supply to meet demand, the Chancellor of the Exchequer announced that we would be reviewing progress of the annual fuel duty increase planned for 1 September.

The Government's focus since 3 June has been on OPEC and oil producers and their responsibilities to meet their own targets on sustainable oil prices, and we have sought to await the outcome of this month's OPEC Ministers meeting before making a further statement. I will give further details of discussions and progress to Members of the House when I appear before the Treasury Select Committee tomorrow.

With the next meeting of OPEC Ministers now moved from July to September, and in light of the continuing uncertainty in the oil market, we have decided to keep the planned increase, including for sulphur-free fuel and rebated fuels, under review, and will report back further at the time of the pre-Budget report. Because of its environmental benefits the Government remain committed to the introduction of sulphur free fuel, and will be in discussion with the industry over its availability across the country. The Chancellor of the Exchequer will also report back on this issue at the time of the pre-Budget report.”

4.7 Therefore, this Order makes the adjustments with effect from 1 September 2004. The adjustments “bite” on the rates that are provided for by section 5 and 7 of the Finance Act, as soon as those provisions comes into force. The effect, in practical terms, is to reduce all the rates of duty and effective rates of duty amended by sections

5 and 7 of the Finance Act back to the levels that existed before sections 5 and 7 of the Finance Act came into force.

4.8 If the instrument is revoked, or expires (for which see section 2(2) of the Act), the rates of duty and rebate affected by this instrument will revert to those provided for by section 5 and 7 of the Finance Act.

4.9 This instrument does not adjust the liability to duty of road fuel gas set by sections 5 and 8 of the Oil Act (which have also been amended by the Finance Act). This liability is to be adjusted by means of regulations made by the Commissioners of Customs and Excise under section 20AA of the Oil Act, for which a separate explanatory memorandum is laid before Parliament today.

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 The rates of fuel duty were increased by the Finance Act as a result of the Chancellor of the Exchequer's Budget 2004. The increases were mostly in line with inflation and were to take effect on 1 September 2004.

7.2 The delayed commencement was to lessen the disruption to oil companies that might otherwise happen from having to make two price adjustments in the course of one year due to duty changes (e.g. once for Budget 2004 and then once again for the introduction of any duty incentive for sulphur-free fuels introduced in September 2004).

7.3 The Government has, however, subsequently decided that it wishes to keep the changes under review and report back to Parliament at the time of the pre-Budget report.

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 There is no impact on the public sector.

9. Contact

9.1 Michael Lyttle at the Environmental Taxation Development Division, HM Customs and Excise, 1st Floor West, New Kings Beam House, 22 Upper Ground London SE1 9PJ (Tel. 020 7865 4770 or e-mail; michael.lyttle@hmce.gsi.gov.uk) can answer any queries regarding the instrument.

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.”