

**EXPLANATORY MEMORANDUM TO THE  
EXCISE DUTIES (SURCHARGES OR REBATES) (BIOETHANOL) ORDER 2004  
2004 No. 3162**

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.

2. **Description**

2.1 This Order decreases the liability to duty on bioethanol that is charged with duty under section 6AD of the Hydrocarbon Oil Duties Act 1979 (c. 5) (“the Oil Act”) by 4.98%. The effect of the deduction is that the liability is 27.10 pence per litre instead of 28.52 pence per litre.

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

3.1 None.

4. **Legislative Background**

4.1 The Act

4.1.1 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”). Those powers were exercised for the first time in their current form in August 2004 (see below, at paragraph 4.3.4). The Act consolidated the provisions of section 9 of, and Schedules 3 and 4 to, the Finance Act 1961, with the provisions amending them.

4.1.2 In summary, the 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 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.

4.1.3 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.

4.1.4 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 rates of duty and rebate that are affected by such an Order remain unchanged, and are set out in the relevant primary legislation. The effect of such an 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.

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

## 4.2 The Oil Act

4.2.1 Section 6(1) of the Oil Act provides that there shall be charged on hydrocarbon oil<sup>1</sup> imported into the United Kingdom, or produced in the United Kingdom, a duty of excise at the rates specified in section 6(1A)<sup>2</sup>. There are rebates of duty or differential rates of duty for various types of hydrocarbon oil.

4.2.2 Section 6(1A) of the Oil Act provides for six separate rates of duty on hydrocarbon oil in respect of sulphur-free petrol (“SFP”)<sup>3</sup>, ultra low sulphur petrol (“ULSP”)<sup>4</sup>, light oil other than ULSP and SFP, sulphur-free diesel (“SFD”)<sup>5</sup>, ultra low sulphur diesel (“ULSD”)<sup>6</sup> and heavy oil other than ULSD and SFD.

4.2.3 Section 5 of the Finance Act 2004 (c.12) (“the Finance Act”) amended section 6(1A) of the Oil Act to provide for the rates of excise duty on most<sup>7</sup> hydrocarbon oils that are for road fuel use to be increased by an amount that reflected the rate of inflation.

4.2.4 Section 7 of the Finance Act amended the Oil Act to provide for new rates of duty for SFP and SFD with effect from 1st September 2004. The rates were set at what would have been the revalorised rates for ULSP and ULSD (the rates of SFP and SFD therefore were set at 48.52 pence per litre). The duty rates for ULSP and ULSD are increased in line with inflation plus half a penny per litre. It is envisaged that, as a result of this duty incentive, SFP and SFD will become the predominant road fuels used in the UK.

4.2.5 In Budget 2004, the Chancellor said that while the oil industry was preparing for the introduction of “sulphur-free” fuels on 1st September 2004, he would “delay for the second year running the annual rise in fuel duty for nearly six months”. Thus, the

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<sup>1</sup> A term defined in section 1(2) of the Oil Act.

<sup>2</sup> 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 2004 (c. 12).

<sup>3</sup> See section 7 of the Finance Act 2004 (c. 12).

<sup>4</sup> 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).

<sup>5</sup> See section 7 of the Finance Act 2004 (c. 12).

<sup>6</sup> 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).

<sup>7</sup> Not ULSD and ULSP, see next paragraph.

amendments made by sections 5 and 7 of the Finance Act all came into effect on 1st September 2004.

4.2.6 Section 6A of the Oil Act<sup>8</sup> provides for a duty of excise to be charged on certain uses of certain liquids (“fuel substitutes”) that are not hydrocarbon oil. The chargeable uses are, in effect, uses as motor 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 Order<sup>9</sup>. The rates are set so as to mirror the rates for the most commonly used diesel and petrol fuels. In the case of a fuel substitute that is a substitute for petrol, the rate is the same as the rate that is set for SFP.

4.2.7 Section 10 of the Finance Act inserted new provisions into the Oil Act<sup>10</sup> that provide for a new, lower, separate rate of duty for “bioethanol”. Bioethanol was formerly charged to duty under section 6A of the Oil Act as a fuel substitute. Bioethanol is a liquid fuel consisting of ethanol (an alcohol) that is produced from biomass (vegetable and animal substances). It is suitable for use in petrol engines.

4.2.8 After the amendments made by section 10 of the Finance Act, bioethanol is charged to duty under section 6AD of the Oil Act and bioethanol blend (a mixture of bioethanol and hydrocarbon oil) is charged to duty under section 6AE of the Oil Act. 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 blends. Other types of fuel substitute for petrol fuel continue to be charged to duty under section 6A.

4.2.9 The rate of duty for bioethanol set by section 6AD of the Oil Act is 28.52 pence per litre, which is 20 pence per litre less than the rate for sulphur-free petrol.

4.2.10 Section 10 of the Finance Act 2004 comes into force on 1st January 2005 and applies to bioethanol that is put to chargeable use<sup>11</sup>, or set aside for chargeable use, on or after that date (and which has not already been charged to duty under section 6A of the Oil Act (see section 10(10) and (11) of the Finance Act)).

### 4.3 The Principal Order

4.3.1 After the OPEC meeting in Beirut of 3rd 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 increases planned for 1st September 2004.

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<sup>8</sup> 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).

<sup>9</sup> S.I. 1995/2716, amended by S.I. 2002/3042 and S.I. 2004/2062.

<sup>10</sup> See in particular, new sections 2AB and 6AD to 6AE of the Oil Act.

<sup>11</sup> See section 6AD(2) of the Oil Act.

4.3.2 On 20th 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.”

4.3.3 Therefore, the Treasury exercised the powers under the Act to make the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc.) Order 2004 (S.I. 2004/2063) (“the Principal Order”). The Principal Order decreases the liabilities to excise duty (and increases rights to rebate in respect of such duty) on the various products cited in the instrument that are chargeable by virtue of the Oil Act, with effect from 1st September 2004.

4.3.4 The adjustments made by the Principal Order take effect on the rates that are provided for by section 5 and 7 of the Finance Act, as soon as those provisions come into force. The practical effect 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. In effect, the Principal Order negates, temporarily, the effect of the increases in duty set out in sections 5 and 7 of the Finance Act. The adjusted liability to duty in respect of SFP is 47.10 pence per litre.

4.3.5 The Principal Order made no provision in respect of bioethanol, since the charging provisions in respect of bioethanol were not due to come into effect until 1st January 2005. At the time that the Principal Order was made, it was not certain whether it would still be in force at 1st January 2005.

#### 4.4 Pre-Budget Report

4.4.1 Following the review by Ministers of the planned duty increases announced in Budget 2004, the Chancellor of the Exchequer reported to the House of Commons on this matter in his pre-Budget report on 2nd December 2004. As a result of that review,

the Chancellor confirmed that, in response to the continued volatility in the global oils market, the freeze on the main road fuel duties would be continued for this year.

4.4.2 Since the rate of duty for bioethanol is linked to that for SFP, this Order makes a similar adjustment to the liability in respect of bioethanol duty as that made by the Principal Order in respect of SFP. The liability to duty in respect of bioethanol is adjusted by the deduction from the amount payable of 4.98%. The effect of the deduction is that the liability is 27.10 pence per litre instead of 28.52 pence per litre. This adjusted liability maintains the 20 pence per litre differential compared with the adjusted liability to duty in respect SFP.

4.4.3 The Chancellor also confirmed in his pre-Budget report that he will implement the narrowing of the duty differential by one penny per litre between rebated oils and main road fuels, with the aim of assisting efforts to reduce oils fraud from pre-Budget 2004 levels and recognising that these fuels are more harmful to the environment than other road fuels. This means the effective rate of duty for rebated fuels would be increased partially as originally planned at Budget 2004.

#### 4.5 Parliamentary Procedure

4.5.1 This instrument is subject to the “negative resolution procedure” by virtue of section 2(8) of the Act because it reduces liability to duty.

### **5. Extent**

5.1 This instrument applies to all of the United Kingdom.

### **6. European Convention on Human Rights**

6.1 Statement not required.

### **7. Policy Background**

7.1 Bioethanol offers significant benefits in terms of reductions in the emissions of greenhouse gases and local air quality improvements. Bioethanol also offers benefits in terms of providing alternative markets for non-food agricultural produce and fuel security. The 2002 pre-Budget Report announced that the Government would introduce a new duty differential of 20 pence per litre for bioethanol to help offset the additional production costs of bioethanol and allow the UK to benefit from the reduction in greenhouse gases and local air quality improvements.

7.2 To ensure the industry is in a position to take advantage of this incentive, the Government, following discussions with the industry, announced in Budget 2003 that the duty incentive would take effect from 1 January 2005. This was confirmed at Budget 2004, and the Finance Act introduced a new specification and duty rate for bioethanol and bioethanol blend (a blend of bioethanol and petrol) intended for use as a motor or heating fuel.

7.3 The duty incentive offered by the Government forms part of a package of measures included in PBR 2004 to encourage the growth of the bioethanol industry in the UK. Other measures include a consultative process and feasibility study on the use of a Renewable Transport Fuel Obligation and continuing discussions with

stakeholders on the application of enhanced capital allowances for the cleanest biofuels processing plants.

## **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.”