

**EXPLANATORY MEMORANDUM TO
THE EXCISE DUTIES (SURCHARGES OR REBATES) (HYDROCARBON OILS
ETC.) (AMENDMENT) ORDER 2005**

2005 No. 3330

1. This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Description

2.1 This instrument, which comes into force on 6th December 2005, amends the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc.) Order 2005 (S.I. 2005/1978) (“the Principal Order”). The effect is to increase, by 1.22 pence per litre, the amount payable in respect of excise duty on most rebated hydrocarbon oils.

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

3.1 None.

4. Legislative Background

The Oil Act

4.1 Section 6(1) of the Hydrocarbon Oil Duties Act 1979 (c. 5) (“the Oil Act”) (which has been amended numerous times) 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)¹. Hydrocarbon oil² is either “heavy oil” or “light oil”³. There are rebates of duty or differential rates of duty for various types of hydrocarbon oil.

4.2 Section 6(1A) of the Oil Act provides for six separate rates of duty on six different types of hydrocarbon oil. 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 will be chargeable at one of the rates specified.

¹ Section 6(1A) of the Oil Act was last amended by sections 4 and 5(3) 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), sections 5 and 7 of the Finance Act 2004 (c. 12) and sections 4 and 5 of the Finance Act 2005 (c. 7).

² A term defined in section 1(2) of the Oil Act.

³ See section 1(3) and (4) of the Oil Act.

4.3 There are rebates of hydrocarbon oil duty provided for by sections 11⁴, 13AA⁵ and 14⁶ of the Oil Act, in relation to what might best be described as non-road fuel use of hydrocarbon oils. In the case of hydrocarbon oils that are eligible for a rebate, in order to work out the amount of duty actually payable, one must subtract the relevant rebate from the relevant “base rate”. For convenience, in this memorandum these amounts are termed the “effective rates of duty”. The rates of duty and rebate provided for in the Oil Act are, typically, amended each year by a Finance Act.

The Regulator Act

4.4 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 Regulator Act”). The Regulator Act consolidated the provisions of section 9 of, and Schedules 3 and 4 to, the Finance Act 1961 (c. 36), with the provisions amending them. The similar powers conferred by the Finance Act 1961 (as amended) were exercised on four occasions, most recently in December 1976.

4.5 In summary, the Regulator 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 or allowance 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.

4.6 As first enacted in 1961 and in the consolidating statute of 1979, 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...” (hence the power is sometimes referred to as the “economic regulator”). Further, the adjustment, if made, had to be of every liability to duty within a group or groups of excise duties cited in the Regulator Act. However, the Regulator 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 Regulator Act applies (it applies to the duties chargeable under the Oil Act), and may specify different percentages for different cases.

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

4.8 It is important to note that the power does **not** permit the Treasury to amend the actual rates of duty or to make textual amendments to the Oil Act or any other

⁴ 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 11(3) of the Finance (No. 2) Act 1997 (c. 58), 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), sections 5(3) and 10(5) of the Finance Act 2004 (c. 12) and sections 4 and 5 of the Finance Act 2005 (c. 7).

⁵ 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), sections 7(6) and 10(6) of the Finance Act 2004 (c. 12) and section 4(8) of the Finance Act 2005 (c. 7).

⁶ Relevant amendments were made by section 5(2) of the Finance Act 2003 (c. 14), section 5(5) of the Finance Act 2004 (c. 12) and sections 4 and 5 of the Finance Act 2005 (c. 7).

primary legislation (see section 1(2) to (4) of the Regulator Act). The effect of an order made under the Regulator Act is that the rates set in the relevant primary legislation are charged, but then the actual liability to pay the duty (or right to claim a rebate, as the case may be) is adjusted. In the case of rebated oils, section 1(4) of the Regulator Act provides that “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 “base rate” of duty *that is set in the Oil Act* and the adjusted rebate will also bite on the “base rate” that is set in the Oil Act. No rebate bites on any adjusted liability.

Recent Finance Acts

4.9 The powers conferred by the Regulator Act were exercised for the first time in August 2004, and then again in December 2004 by three instruments (“the Regulator Orders”)⁷. The exercise of the powers was in response to the continued volatility in the international oils market in the period after Budget 2004. As with the Principal Order, the point of the exercise of the first Regulator Order was to make adjustments to each liability to duty and each right to rebate of duty under the Oil Act of such an amount as to negate, temporarily, the effect of the increases in duty set by a Finance Act of that year, in the light of the changed international market conditions since those provisions were enacted. In December 2004, a further instrument was made to apply the same treatment to bioethanol (for which a new rate of duty was due to come into force on 1st January 2005). A third instrument was made in December 2004 which amended the amount of the adjustment in respect of rebated hydrocarbon oils: the effect of this third instrument was effectively to raise the effective rate of duty on rebated hydrocarbon oils by 1 penny per litre.

4.10 In Budget 2005, the Chancellor decided to maintain the duty differential for rebated oils and, because of the sustained volatility in the oil market, to defer the usual inflation increase for all fuel duty, including rebated oils, until 1 September 2005.

4.11 To give effect to this decision, section 4 of the Finance Act 2005 (c.7) (“the 2005 Act”) consolidated the effect of the Regulator Orders and revoked them with effect from 7th April 2005, so as to regularise the position in primary legislation. Section 5 of the 2005 Act amended the Oil Act to provide for those rates of excise duty to be increased by an amount that reflected the rate of inflation with effect from 1st September 2005. For the “main” road fuels this was an increase of 1.22 pence per litre. The effective rates of duty for the heavy oils that are not for road fuel use and light oil for use as furnace fuel were also increased by 1.22 pence per litre to maintain the differential between these rebated oils and the main road fuels.

4.12 On 5th July 2005, the Financial Secretary to the Treasury (Mr John Healey MP) gave the following written ministerial statement:

“The Chancellor of the Exchequer announced in the Budget that, owing to the sustained volatility in the oil market, the annual inflation-only increase in main fuel duties would be deferred until 1 September.

Following sustained pressure from G8 finance ministers, OPEC have committed to increasing quotas by up to 1 million barrels a day by September.

⁷ S.I.2004/2063, S.I. 2004/3160 and S.I. 2004/3162.

But in the short-term uncertainty, and the risk of price volatility, remains high, with oil trading last week at above \$59 per barrel.

The Government will not go ahead with the planned inflation increase on 1 September - including for rebated oils, biofuels and road fuel gases - and will review the position again at the time of the Pre-Budget Report.” (Hansard; Written Ministerial Statements, 5 July 2005, Column 4WS)

4.13 Therefore, as occurred in August 2004 with the Regulator Orders, the Principal Order made adjustments to the liabilities to excise duty (and rights to rebate in respect of such duty) on the various liquid fuels chargeable with duty by virtue of the Oil Act. The Principal Order came into force on 1st September 2005. Therefore the adjustments made by the Principal Order “bite” on the rates that are provided for by section 5 of the 2005 Act, as soon as those provisions come into force. The effect, in practical terms, is to reduce all the rates of duty and effective rates of duty on liquid fuels amended by section 5 of the 2005 Act back to the levels that existed before section 5 of the 2005 Act came into force.

4.14 In the case of the rebated hydrocarbon oils, article 4 of the Principal Order adjusted the amount allowable as rebate by the addition to the amount of rebate allowable of the percentage specified in each case. The amount allowable as rebate is made larger, which gives the result that the effective rate of duty (the relevant “base rate” minus the relevant rebate) is reduced. In particular, the effective rate of duty is reduced so as to give the same result as if the amendments made by section 5 of the 2005 Act had not come into force.

4.15 This instrument now amends the Principal Order by deleting all the adjustments to **rebates** of duty provided for by that instrument. Thus, in the case of the rebated oils the effective rate of duty is increased back to the levels provided for by section 5 of the 2005 Act. No further adjustment is to be made in respect of these fuels. As a result of this instrument, the effective rates of duty are £0.0604 per litre for fuel oil and light oil for use as furnace fuel, and £0.0644 pence per litre for the other rebated oils dealt with by the instrument.

4.16 However, this instrument does not adjust the liability to duty of any hydrocarbon oil in respect of which rebate is not allowed. Those liabilities continue to be adjusted by articles 3 and 5 of the Principal Order. Nor does this instrument affect the liability to duty in respect of road fuel gas that set by sections 5 and 8 of the Oil Act (which have also been amended by section 5 of the 2005 Act with effect from 1st September 2005). That liability is affected by the regulations made by the Commissioners for Revenue and Customs under section 20AA of the Oil Act (the Excise Duties (Road Fuel Gas) (Reliefs) Regulations 2005, S.I. 2005/1979), which continue to have effect.

Parliamentary Procedure

4.17 This instrument is subject to the “affirmative resolution procedure” by virtue of section 2(7)(b) of the Regulator Act. Although section 2(7) of the Regulator Act does not expressly refer to the adjustments that might be made to rights to rebate etc, it is clearly intended that any Order made under the Act that has the effect of increasing the amount of duty that a person must pay (either by the making of a “surcharging” Order, or the withdrawal or amendment of a “relieving” Order), must be approved by the House of Commons. Any Order that has the opposite effect (either a “relieving”

Order, or the withdrawal or reduction of a “surcharging” Order) is subject to annulment in pursuance of a resolution of the House of Commons.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury, Mr John Healey MP, has made the following statement regarding Human Rights:

In my view the provisions of the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils etc.) (Amendment) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 The rates of fuel duty were increased by the 2005 Act as a result of the Chancellor of the Exchequer’s Budget 2005. The increases for main road fuel duties were in line with inflation, while rates for biofuels, rebated oils and road fuel gases were increased above inflation to maintain consistent differentials. Increases were to take effect on 1st September 2005.

7.2 The delayed commencement was owing to sustained volatility in the oil market. In July 2005, as a result of continuing high risk of price volatility, the Government decided not to go ahead with the planned increases but to review the position at the time of the Pre-Budget Report.

7.3 In considering whether or not to go ahead with introducing the planned duty increases set out in the 2005 Budget, Ministers decided at the Pre-Budget Report that, in the light of the continuing volatility in the oil market, the freeze on the duty rates of the main road fuels would continue until Budget 2006.

7.4 Ministers also considered the context of the UK Oils Strategy and the need to continue to tackle oils fraud when making decisions on duty rates. In 2001, oils fraud in Great Britain cost the Exchequer around £700 million, representing around 6 per cent of the diesel market. The UK Oils Strategy was launched in 2002, and, by 2004, fraud had fallen to around 4 per cent of the diesel market. The Government’s Strategy aims to make rebated fuels fraud unattractive as a crime and is focused on stopping large-scale commercial and criminal fraud through a combination of law enforcement activity and better controls on the sale and distribution of the oils involved. Narrowing the differential between rebated oils and road fuel is one aspect of a multi-stranded approach, and as such represents a measured and proportionate response.

7.5 In further support of the UK Oils Strategy, and to reduce incentives for fraud, Ministers decided that the effective rate of duty on rebated fuel oil, light oil, gas oil (and on rebated kerosene that is not for heating use, which is a potential substitute for rebated gas oil and therefore tracks the rate for rebated gas oil) would be increased by 1.22 pence per litre as had already been set out in the 2005 Act.

7.6 The increase in the effective rate of duty on fuel oil and on light oil for use as furnace fuel reflects the polluting nature of these fuels.

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

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Annex A

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.”