

EXPLANATORY MEMORANDUM TO
THE HYDROCARBON OIL (REGISTERED REMOTE MARKERS) REGULATIONS
2005

2005 No. 3472

1. This explanatory memorandum has been prepared by Her Majesty's Commissioners for Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument makes provision for hydrocarbon oil that is not intended for use as road fuel to be marked after it has been delivered for home use (the time of delivery for home use being the time when excise duty becomes payable). It enables relief from excise duty to be obtained to the extent of the rebate of duty that would have been allowed had the oil been marked before being delivered for home use.

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

3.1 None

4. Legislative Background

4.1 Council Directive 95/60/EC and its transposition into UK law via the Hydrocarbon Oil (Marking) Regulations 2002 (S.I. 2002/1773) require hydrocarbon oil that is not intended for use as road fuel to be marked with chemical markers and colouring substances as a condition of being allowed rebates of duty. Section 11 of the Hydrocarbon Oil Duties Act 1979 (c.5) provides for rebates to be allowed at the time of delivery for home use, but not at any later time. After delivery for home use has been made, and the appropriate duty paid, there is often a commercial need to divert oil products to another use on which either a lower rate of excise duty, or none at all, is levied. To qualify for a reimbursement ('relief') of excise duty, the oil must be fiscally marked, at a Registered Remote Marker's premises.

4.2 This instrument permits marking to take place after delivery for home use, and affords relief from excise duty to the extent of the rebate of duty that would have been allowed had the oil been marked before being delivered for home use. Provisions for minimum levels of taxation of energy products (including hydrocarbon oil), and provisions for exemption from, or reduction of, taxation of those products are to be found in Council Directives 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene (OJ No. L291, 6.12.1995 p.46) and 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ No. L283, 31.10.2003, p.51); known as the Energy Products Directive or EPD. Transposition Notes are annexed to this memorandum. Directive 95/60/EC was examined in 1994 by the Scrutiny Committee of the House of Commons and House of Lords and cleared as not legally or politically important. The EPD was considered by the House of Commons European Scrutiny Committee on 27 November 2002¹ and cleared by sub-Committee A of the House of Lords Select Committee on

¹ 2nd Report of Session 2002-03, HC 63-ii.

the European Union by letter dated 5 December 2002 to Dawn Primarolo, Paymaster General, HM Treasury².

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Hydrocarbon Oil Duties Act 1979 and Directive 95/60/EC (both mentioned above) seek to control the fraudulent misuse of hydrocarbon oil by the addition of fiscal dyes and markers to assist detection of any such misuse; and to facilitate legal action against transgressors. This is one initiative in a raft of measures to combat oils fraud. The instrument will control the fiscal marking of oils outside refinery or excise warehouse premises, and in so doing, assist in combating the risks to revenue associated with oils being diverted from their intended and legitimate uses to misuse as motor fuels or extenders without payment of the appropriate excise duty. It is difficult to quantify the size of this illicit market. The instrument represents a significant step forward to counter fraud; often involving the smaller players in the waste oil business who are active in this area and who, because of their diversity (and also often their geographical remoteness) constitute a potential revenue risk. Although the level of public interest is likely to be minimal, the instrument is nonetheless both legally and politically important because it gives legal force to the measures being adopted to control the marking of oil and the consequential claims for reimbursement of excise duty, where appropriate.

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 The impact on the public sector is negligible.

9. Contact

Charles Markuss at Her Majesty's Commissioners for Revenue and Customs, Tel: 0161 827 0910 or e-mail: Charles.Markuss@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

13 December 2005

² Progress of Scrutiny, First Report for Session 2002-03, 9 December 2002, ISBN 010 490192 6.

Transposition Note for Council Directive 2003/96/EC (the “Energy Products Directive”)

Articles	Objectives	Implementation	Responsibility
1	Member states to impose taxation on energy products in accordance with this Directive	This Directive replaces and repeals two earlier Council Directives and gives a unified framework to the treatment of motor and heating fuels. Many of the articles in this Directive are therefore already enacted in UK legislation. Where this is the case this transposition note records that no action is necessary.	Economic Secretary to the Treasury . Policy Responsibility is with Oils Team, Tax Practice, HM Customs & Excise, Ralli Quays, Salford.
2	Lists the products to which the Directive applies and provides conditions under which those products are taxed. Also lists products and uses of those products that the Directive does not apply to	Existing UK legislation covers a wide range of these products and their taxable uses, divided between Climate Change Levy and Excise Duties on motor and heating fuels (both administered by Customs and Excise).	As above
3	Application of Directive 92/12/EEC	No action necessary	
4	Minimum levels of Taxation	No action necessary	
5	Differentiated levels of taxation allowed in particular circumstances	No action necessary	
6	Defines how exemptions and reductions may be given	No action necessary	
7	Implementation dates for minimum levels of taxation with particular reference to gas oil, public transport and road user charges	No action necessary	
8	Minimum levels of taxation appropriate to various industrial and commercial purposes such as agriculture and stationary motors	No action necessary	
9	Minimum taxation levels for heating fuel	No action necessary	
10	Minimum taxation levels for electricity.	No action necessary	
11	Definition of “business use”	No action necessary	

Articles	Objectives	Implementation	Responsibility
12	Units of measurement	No action necessary	
13	Value of Euro in determining levels of taxation	No action necessary	
14	Range of exemptions	Existing legislation and the Hydrocarbon Oil (Registered Remote Markers) Regulations 2004, regulations 8 to 13.	Economic Secretary to the Treasury. Policy Responsibility is with Oils Team, Tax Practice, HM Customs & Excise, Ralli Quays, Salford.
15	Range of exemptions allowable for particular purposes	No action necessary	
16	Range of exemptions and reduced tax rates for certain energy products, including products produced from biomass. Includes requirement for member states to inform the Commission of tax reductions and exemptions applied	No action necessary.	
17	Reduced levels of taxation for heating purposes, stationary motors, agricultural, forestry or horticultural work, construction plant and similar machinery, and off-road vehicles	No action necessary	
18	Derogations – including expiry of certain derogations on 31 December 2006	No action necessary	
19	Commission powers to grant or revoke derogations	No action necessary	
20	Provides for which energy products are to be subject to duty suspension arrangements under Directive 92/12	No action necessary	
21	Provides for circumstances and events when duty charge is applicable	No action necessary	
22	Allows for tax increases to apply to energy products held in stock	No action necessary	
23	Allows for refunds on contaminated products sent back for recycling	No action necessary	

Articles	Objectives	Implementation	Responsibility
24	Prevents dual taxation of fuel used for transport between member states	No action necessary	
25	Requirement for annual report of levels of taxation on energy products	No action necessary	
26	Requirement to inform the Commission of measures taken in respect of Articles 5, 14(2), 15 and 17	No action necessary	
27	References to Decision 199/468/EC and adoption of Rules of Procedure	No action necessary	
28	Time limits for compliance with this Directive	No action necessary.	
29	Periodic examination of exemptions and minimum levels of taxation	No action necessary	
30	Repeal of Directives 92/81 and 92/82	No action necessary	
31	Date of entering into force	No action necessary	
32	Directive addressed to Member States	No action necessary	
Annex I	Minimum levels of taxation applicable to motor fuels, heating fuels and electricity	No action necessary	
Annex II	Reduced rates and exemptions from taxation applicable to member states	No action necessary	

Transposition Note for Council Directive 95/60/EC

Articles	Objectives	Implementation	Responsibility
1	Member states shall apply a fiscal marker to gas oil and kerosene released for consumption that has been exempt from or subject to excise duty at a lower rate.	Existing UK legislation, and also the Hydrocarbon Oil (Registered Remote Marking) Regulations 2004.	Economic Secretary to the Treasury. Policy Responsibility is with Oils Team, Tax Practice, HM Customs & Excise, Ralli Quays, Salford.
Articles	Objectives	Implementation	Responsibility
2	The marker shall consist of a well-defined combination of chemical additives. Member States may, in certain exceptional cases or situations, allow markers to be added after the mineral oils in question are released for consumption under fiscal supervision. Member States may reimburse the excise duty paid when the product was released for consumption	Existing UK legislation, and also the Hydrocarbon Oil (Registered Remote Markers) Regulations 2004, regulation 6. Existing legislation and regulations 9 to 12 of the above Regulations.	As above.
3	Member States shall take the necessary steps to ensure the improper use of the marked products is avoided and cannot be used for combustion in the engine of a road-going motor vehicle.	No action necessary	
4	Member States may add a national marker or colour to the marker provided for in Article 1.	No action necessary	
5	Member States shall bring into force the provisions necessary to comply with this Directive.	No action necessary	