

EXPLANATORY MEMORANDUM TO
THE EXCISE DUTIES (SURCHARGES OR REBATES) (HYDROCARBON OILS
ETC.) (REVOCATION) ORDER 2008

2008 No. 3018

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. **Purpose of the instrument**

This instrument, which comes into force on 1st December 2008, provides that the Excise Duties (Surcharges or Rebates) (Hydrocarbon Oils Etc) Order 2008 (S.I.2008/2168) (“the principal Order”) shall cease to have effect in relation to products charged with duty under the Hydrocarbon Oil Duties Act 1979 (c. 5) (“the Oil Act”) after the coming into force of this Order. The principal Order adjusted the liabilities to excise duty (and, where applicable, the rights to rebate in respect of such duty) in respect of liquid fuels that are chargeable by virtue of the Oil Act. In particular, the purpose of that instrument was to negate, temporarily, the effect of the increases in duty provided for by section 15 of the Finance Act 2008 (c.9) (“the Finance Act”) in relation to those fuels. This Order “re-instates” the effect of that section with effect from 1st December 2008.

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

None

4. **Legislative Context**

4.1 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 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.

4.2 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.

4.3 The powers conferred by the Regulator Act were exercised for the first time in August 2004, and since then have been exercised in December 2004, July 2005, December 2005, July 2006, December 2006 and July 2008. The exercise of the powers was in response to the continuing uncertainty in the oils market in the period after the Budget. As with this instrument, the point of the exercise of the Regulator

Orders was to negate, temporarily, the effect of an increase in duty set in the Finance Act of that year, in the light of the changed international market conditions since those provisions were enacted. The similar powers conferred by the Finance Act 1961 (as amended) were exercised on four occasions, most recently in December 1976.

4.2 Budget 2008 announced that the planned fuel duty increase of 2 pence per litre in April 2008 was postponed to 1st October 2008, to support the economy and to help business and families.

4.3 To give effect to this decision, section 15 of the Finance Act amended the Oil Act to provide for those rates of excise duty to be increased with effect from 1st October 2008. For the “main” road fuels this was an increase of 2 pence per litre. The rates of rebate for the heavy oils that are not for road fuel and light oil for use as furnace fuel use were increased by the same percentage as main road fuels. Also, with effect from 1st November 2008, section 13ZA¹ of the Oil Act provides for only a partial rebate of excise duty on certain heavy oil used as heating or a fuel for an engine at the rate specified in section 11(1)(a) of the Oil Act rather than at the rate specified in section 11(1)(c).

4.4 On 16th July, the Chancellor of the Exchequer informed Parliament, in answer to a parliamentary question, of his decision not to proceed with the planned 1 October increases in fuel duties, in the light of the global credit crunch and sharp rises in world oil prices which had pushed up prices at the pump. The principal Order gave effect to that decision.

4.5 Following a review of the position in the Pre-Budget Report, this instrument, by revoking the principal Order, gives effect to the Ministerial decision to implement the increase in effective rates as announced at the last Budget, but with effect from 1st December 2008.

4.6 This instrument applies only to liquid fuels. The changes to fuel duty rates in respect of road fuel gas made by section 15 of the Finance Act are, in effect, reinstated by a separate Order, the Excise Duties (Road Fuel Gas) (Reliefs) (Revocation) Regulations 2008 (S.I. 2008/3019). A separate explanatory memorandum has been prepared for those regulations, which has been laid before Parliament today.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury (Ms Angela Eagle) has made the following Statement regarding Human Rights:

“In my view the provisions of the Excise Duties (Surcharges or Rebates) (Revocation) Order 2008 are compatible with the Convention rights”

¹ Section 13ZA was inserted by Finance Act 2008 (c.9), section 16, Schedule 6, paragraph 28.

7. Policy background

- *What is being done and why*

7.1 The rates of fuel duty were increased by the Finance Act 2008 as a result of the Chancellor of the Exchequer's Budget 2008. Changes to the duty rates were to take effect on 1st October 2008.

7.2 The decision not to proceed with the 1st October increase in fuel duty was taken by the Chancellor in the light of the sharp rises in world oil prices which had pushed up prices at the pump. The Chancellor of the Exchequer informed Parliament on 16th July, in answer to a parliamentary question, of his decision.

7.3 The Chancellor has now decided that as oil prices have fallen substantially since the decision to freeze rates in July, an increase in effective rates should be implemented, as announced at the last Budget.

- *Consolidation*

7.4 There are no consolidation issues as this instrument revokes the principal regulations.

8. Consultation outcome

There has not been any consultation as the change reflects a PBR decision on rates.

9. Guidance

A PBR note has been published and is available on www.hmrc.gov.uk

10. Impact

10.1 An Impact Assessment has not been produced for this instrument as it has a negligible impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is not to introduce any new regulatory requirements as part of this change in duty liability.

11.3 The basis for the final decision on what action to take to assist small business was the Government's policy not to introduce new regulatory requirements unless absolutely necessary.

12. Monitoring & review

Duty rates are monitored and reviewed as part of every PBR/Budget process.

13. Contact

Tim Smith at the Transport Tax Team Tel: 020 7147 0573 or email:
timothy.smith@hmrc.gsi.gov.uk can answer any queries regarding the instrument.