

EXPLANATORY MEMORANDUM TO
THE OTHER FUEL SUBSTITUTES (RATES OF EXCISE DUTY ETC.)
(AMENDMENT) ORDER 2008
2008 No. 754

1. 1.1 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.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

This instrument, which comes into force on 1 April 2008, makes consequential amendments to the Other Fuel Substitutes (Rates of Excise Duty etc.) Order 1995 (“the principal Order”), which sets out duty rates for fuel substitutes. The amendments are necessary following the simplification of the hydrocarbon oil duty rate structure in the Hydrocarbon Oil Duties Act 1979 (HODA) by a resolution passed by the House of Commons on 18th March 2008 under section 1 of the Provisional Collection of Taxes Act 1968 (c.2). The effect of this instrument is to remove from the principal Order references to categories of oil which no longer exist in HODA and replace them with the corresponding simplified categories.

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

It has been necessary to breach the “21 day rule”. This is because the amendments made by the Order are a Budget measure. It was not possible to lay the instrument until after the changes were announced on Budget Day. Also, the Order is part of a “package” with S.I. 2008 No. 753 which made similar amendments to other instruments but contained other regulations that could not be made until another resolution under section 1 of the Provisional Collection of Taxes Act 1968 had been passed. It is necessary for the Order to come into force on 1st April so as to coincide with the amendments made to HODA by the resolution referred to in paragraph 2.

4. Legislative Background

4.1 Section 6 (1A) of the Hydrocarbon Oil Duties Act 1979, which specifies the rates of excise duty charged on various kinds of hydrocarbon oil, was substituted, with effect from 1st April 2008, by a resolution passed by the House of Commons on the 18th March 2008 under section 1 of the Provisional Collection of Taxes Act 1968 (“the 1968 Act”).

4.2 Section 13A of HODA, which provides for a rebate of duty on unleaded petrol other than ultra low sulphur petrol and sulphur-free petrol, was repealed by the same resolution.

4.3 The resolution has temporary statutory effect as provided for by section 1 of the 1968 Act.

4.4 As a result of the resolution, the number of different rates of duty specified in section 6(1A) of HODA are reduced to three, with effect from 1st April 2008. These are a rate for unleaded petrol, a rate for light oil other than unleaded petrol and a rate for heavy oil.

4.5 As a result of the reduction in the number of different rates this Order makes amendments to the principal Order to substitute references in that Order to leaded petrol, ultra low sulphur petrol, sulphur-free petrol and sulphur-free diesel. The effect of these changes on the rates of duty charged on fuel substitutes is set out in the Explanatory Note to the Order.

4.6 Similar amendments are made to other instruments by S.I. 2008 No. 753 in relation to which there is a separate Explanatory Memorandum.

5. Territorial Extent and Application

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 HODA sets out the charging provisions for excise duty on hydrocarbon oil and defines the various categories of oil.

7.2 The current fuel duty rate structure in HODA is complicated, and oil producers, who are responsible for paying the duty to HM Revenue and Customs, have called for it to be simplified. In the past, fuel duty rates have been used to incentivise the use of more environmentally-friendly fuels, as an alternative or precursor to regulation by the Department for Transport (DfT). This has resulted in an accumulation of technical specifications in HODA which are no longer needed given DfT fuel quality regulations. Current definitions of fuels within HODA can result in “duty traps” if a fuel falls between two definitions and is caught by a higher duty rate. Problems of this kind would be increasingly likely to happen under current legislation in the run up to the introduction of the Renewable Transport Fuel Obligation from 15 April 2008.

7.4 A resolution passed by the House of Commons on 18th March 2008 under section 1 of the Provisional Collection of Taxes Act 1968 amends HODA by reducing the number of duty rates for light oil (petrol) from four to two: “unleaded petrol” and “light oil other than unleaded petrol”, with effect from 1st April 2008. The rebate on “unleaded petrol” in section 13A of HODA is repealed and is replaced by a freestanding rate, and, in addition, sulphur-free petrol and ultra low sulphur petrol will no longer be sub-categories of unleaded petrol. Similarly, the three existing duty rates for heavy oil (diesel) are reduced to one. Sulphur-free diesel and ultra low sulphur diesel are no longer sub-categories of heavy oil.

7.5 It is, therefore, necessary to amend the principal Order, which sets out duty rates for fuel substitutes by reference to the fuel for which they are substituting, by removing

references to “sulphur-free petrol”, “ultra low sulphur petrol”, “leaded petrol” and “sulphur-free diesel” and replacing them with the appropriate simplified categories.

8. Impact

8.1 An 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

Tim Smith at HM Revenue and Customs Tel: 020 7147 0573 or e-mail: timothy.smith@hmrc.gsi.gov.uk can answer any queries regarding the instrument.