

EXPLANATORY MEMORANDUM TO
THE HYDROCARBON OIL AND BIOFUELS (NORTHERN IRELAND PRIVATE
PLEASURE CRAFT) REGULATIONS 2021

2021 No. 780

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and also on behalf of HM Treasury, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 From 1 October 2021 use of rebated fuel (red diesel) for propelling private pleasure craft in Northern Ireland is being prohibited. This instrument introduces a number of changes which take effect from the same date as a consequence of this prohibition. It establishes a new relief scheme on fuel used for non-propulsion in Northern Ireland, defines circumstances in which a craft is not to be treated as a private pleasure craft, requires that fuel to which the relief can apply must not be landed again at any place in the United Kingdom (UK) without HMRC's consent, and makes consequential changes to other excise regulations (see paragraphs 6.4 to 6.7 for more detail).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument is designed to form the final part of the government's implementation of a 2018 judgment by the Court of Justice of the European Union (CJEU) (case C-503/17). The Court ruled that it is contrary to Council Directive 95/60/EC ('the Fiscal Marking Directive') for the UK to allow marked diesel (rebated fuel marked with various chemicals, including a red dye to enable misuse to be detected) to propel

private pleasure craft. Although there is now no need to implement the judgment in Great Britain as a result of the UK's departure from the European Union (EU), there is a continuing obligation to implement it in Northern Ireland as result of provisions in the Northern Ireland Protocol to the Withdrawal Agreement (Article 8, Annex 3), which is given legal effect by the European Union (Withdrawal) Act 2018. The Protocol sets out that EU rules in relation to excise goods (which include hydrocarbon oils) will continue to apply in Northern Ireland.

- 6.2 The Hydrocarbon Oil Duties Act 1979 (HODA) covers the UK law on the taxation of hydrocarbon oils, including diesel used on and off road. Sections 14E and 14F cover the main provisions for fuel used to propel private pleasure craft. They allow red diesel to be supplied to operators of private pleasure craft for all uses but compel suppliers of the fuel to collect the additional duty on the fuel used for propulsion of private pleasure craft.
- 6.3 Schedule 11 to the Finance Act 2020 (c. 14) ("Schedule 11") amends section 12, and replaces sections 14E and 14F, of HODA to disallow the rebates that apply to diesel used for propelling private pleasure craft, requiring diesel-powered craft to use unmarked diesel for this purpose, which is dutiable at the full rate. It includes at new section 14E(7) a power for the Treasury to make regulations to provide where the craft is not to be regarded as a private pleasure craft. Under paragraph 18 of Schedule 11 the changes come into force on such day or days as the Treasury may by regulations appoint and these regulations may specify whether the changes apply either to the whole of the UK or to parts of the UK. The regulations made under paragraph 18 (which have no parliamentary procedure) were made on 28 June 2021 (the Finance Act 2020, Schedule 11 (Appointed Day) (Northern Ireland) Regulations 2021 (S.I. 2021/740 (C. 36)). They appointed 1 October 2021 as the date for the commencement of paragraphs 1 to 17 of Schedule 11 in relation to Northern Ireland, with the exception of paragraphs 8 and 13 of Schedule 11 for which 29 June 2021 was appointed for the purpose of making regulations (this instrument) under the powers in new section 14E(7) of, and Schedule 4 to, HODA respectively, also in relation to Northern Ireland. This instrument was made on 30 June 2021 and laid on 1 July 2021.
- 6.4 This instrument introduces a number of changes that are needed as a consequence of the new prohibition on use of red diesel to propel private pleasure craft in Northern Ireland, all with effect from 1 October 2021. First, it provides for two cases in which a craft is to be treated as not being a private pleasure craft, meaning the craft can continue to use red diesel: residential craft in Northern Ireland with a single fuel tank supplying an engine that is not used to propel the craft; and craft used in Northern Ireland under instruction of an HMRC officer for the purposes of removing restricted fuel from the craft.
- 6.5 Second, the instrument introduces a relief for fuel for non-propulsion purposes. The relief is provided for under section 20AA of HODA and will allow fuel suppliers to private pleasure craft in Northern Ireland who are registered for this scheme with HMRC to claim relief from fuel duty (the difference in duty between the full duty-paid diesel they have supplied and the lower, rebated rate for red diesel). The supplier can apply relief on 40% of the diesel it supplies to such craft (40% being typical of a private pleasure craft's non-propulsion use) if it passed on the saving to the craft user at the point of sale. The relief will mean that the price paid for non-propulsion fuel by private pleasure craft users includes duty at the lower rate, in line with what happens

in Great Britain where non-propulsion diesel used by private pleasure craft also bears the lower rate of duty.

- 6.6 Third, the instrument requires that diesel to which the relief can apply must not be landed again (removed from the craft) at any place in the UK without the written consent of the Commissioners for HMRC – this will reduce the potential for the fuel to be sold on and/or used for unlawful purposes.
- 6.7 Finally, the instrument makes consequential changes to other excise regulations arising from the new prohibition.

7. Policy background

What is being done and why?

- 7.1 Historically, the UK has charged two rates of duty on diesel fuel - the full rate (currently 57.95 pence per litre) on road fuel and the rebated rate (currently 11.14 pence per litre) for other uses. Rebated fuel is marked with various chemicals including a red dye to enable misuse to be detected. Currently red diesel is used in commercial craft and in private pleasure craft throughout the UK. To comply with the Energy Taxation Directive (2003/96 EC) since 2007, the latter have had to pay the duty differential between the rebated and full rate for diesel, if the fuel is used to propel their craft (but not on the fuel used for non-propulsion uses). This means that, even though they are allowed to put red diesel in both their propulsion and non-propulsion fuel tanks (where they have separate tanks), in effect, the price private craft users pay for fuel that they intend to use for propulsion includes duty at the full diesel rate. The price they pay on the rest of the fuel includes duty at the red diesel rate. The way this is achieved is that when private pleasure craft users in the UK fill up with rebated fuel, they pay the fuel supplier the difference between the rebated and full rates of diesel on all the fuel they intend to use to propel their craft.
- 7.2 In 2018, the CJEU ruled that the use of red diesel to propel private pleasure craft breached the Fiscal Marking Directive, which is designed to ensure that any misuse of diesel crossing EU internal borders can be detected given the variation in duty treatment in member states.
- 7.3 Following a consultation in 2019 on how to implement the changes required by the CJEU judgment (see paragraph 10.1 below), Finance Act 2020 included legislation to implement the changes and provided for them to be brought into force on a date specified in secondary legislation. The primary legislation was not brought into force immediately as Budget 2020 announced wider reforms to red diesel entitlements, to be introduced from April 2022, and the government needed to assess the impact of the wider reforms on the private pleasure craft changes through a consultation in summer 2020. The outcome of the 2020 consultation was announced and published at Budget 2021 and a Tax Information and Impact Note (see <https://www.gov.uk/government/publications/reform-of-red-diesel-entitlements>) was published alongside that Budget. This set out who would be allowed to continue to use red diesel from April 2022. This included all marine craft refuelling and operating in the UK (including fishing and water freight industries), except (in order to implement the CJEU judgment of 2018) for diesel bought in Northern Ireland by private pleasure craft on or after 1 October 2021 (in the circumstances set out in paragraph 7.4).

7.4 Most private pleasure craft in the UK have only one fuel tank for their propulsion and non-propulsion fuel and therefore in Northern Ireland they will have to use white diesel in that tank once the red diesel prohibition comes into force on 1 October 2021. Those craft with a separate tank that does not supply fuel to an engine that propels the craft will be able to continue to use red diesel in that tank. Private pleasure craft users from Northern Ireland will be able to refuel with red diesel in Great Britain (or elsewhere where red diesel is legally available for use by private pleasure craft, such as the Channel Islands and the Isle of Man) before travelling to Northern Ireland. They should keep evidence of their purchases so that they can show HMRC on request that they refuelled lawfully.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate the amendments made by this instrument as they are minor in nature.

10. Consultation outcome

10.1 Over summer 2019, the government consulted on how it intended to implement the CJEU judgment of 2018. It proposed requiring private pleasure craft in the UK to use full duty-paid diesel for propulsion. The consultation sought evidence of the impact this would have on both users of diesel-powered craft operating in UK inland waterways and along the coast and on the companies that supply diesel to them. The consultation stated that responses would be used to help determine whether a period would be required for suppliers, known as Registered Dealers in Controlled Oil, and users of diesel fuel to adapt to using full duty-paid diesel for propulsion of private pleasure craft and, if needed, the length of any such period. Some implementation challenges were identified, and the government published its response to the consultation in July 2020. That document is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899181/Implementation_of_the_Court_of_Justice_of_the_European_Union_CJEU_judgment_on_diesel_fuel_used_in_private_pleasure_craft_-_Summary_of_Responses.pdf.

10.2 A further consultation took place during 2020 (see paragraph 7.3).

10.3 Following the announcement at Budget 2021 that this measure would be introduced in Northern Ireland only, the government took account of discussions with Northern Ireland private pleasure craft users and their fuel suppliers in deciding to make the changes effective from 1 October 2021. They provided compelling evidence that they would be unable to build the additional fuel supply infrastructure during the sailing season to enable diesel at the full rate of duty to be supplied to private pleasure craft and red diesel to be supplied to commercial craft. Introducing the changes in October 2021 gives suppliers time to get the infrastructure in place for the start of the 2022 season and avoids disruption during the 2021 season.

11. Guidance

- 11.1 HMRC's guidance on private pleasure craft has been updated with an outline of the changes. It will be further updated in advance of the changes taking effect on 1 October 2020 to reflect the detailed changes that are being made to current procedures (see: <https://www.gov.uk/government/publications/excise-notice-554-fuel-used-in-private-pleasure-craft-and-for-private-pleasure-flying/excise-notice-554-fuel-used-in-private-pleasure-craft-and-for-private-pleasure-flying>).

12. Impact

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies. This instrument will affect an estimated 1,500 users of private pleasure craft in Northern Ireland who currently use red diesel and a small number of fuel suppliers that supply diesel fuel to these users. It will enable the fuel suppliers to claim relief from duty on 40% of the fuel they sell to private pleasure craft users in Northern Ireland in recognition that this is typically the amount used by private pleasure craft for non-propulsion purposes. This is conditional on the fuel supplier having charged the lower price for this fuel at the point of sale.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note covering this measure was published on 20 March 2020 alongside the announcement at Budget 2020 of the intention to prohibit use of red diesel by private pleasure craft. This has been updated as a result of changes to the impacts as a result of this instrument and is available on the website at:

<https://www.gov.uk/government/publications/fuel-duty-changes-for-diesel-used-in-private-pleasure-craft>.

While government advice on social distancing and unnecessary travel applies, a person unable to access this note electronically may access it in hard copy by post free of charge on application and otherwise by inspection free of charge by contacting HMRC at 100 Parliament Street, London SW1A 2BQ (telephone: fuel duty enquiry line 0300 200 3700).

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. This measure is expected to have a negligible administrative burden impact on a small number of operators of refuelling stations at marinas, ports and inland waterways in Northern Ireland who can claim relief from duty on the fuel they supply to private pleasure craft users for non-propulsion use if they lower their price for the fuel at the point of sale to reflect the relief they intend to claim.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses was consultation with businesses over the summers of 2019 and 2020.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the legislative change will be kept under review through continuing communication with key stakeholder groups.

14.2 This instrument does not include a statutory review clause. It amends UK tax legislation and therefore falls within the exceptions at section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Dale Cambridge-Sharpe at HMRC Telephone: 03000 558483 or email: dale.cambridge-sharpe@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Judith Kelly, Deputy Director for Excise and Environmental Taxes at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch, Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.