

**EXPLANATORY MEMORANDUM TO**  
**THE HYDROCARBON OIL DUTIES (CONSEQUENTIAL AMENDMENTS AND**  
**TRANSITIONAL PROVISIONS) REGULATIONS 2022**

**2022 No. 234**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC), partly on behalf of Her Majesty's Treasury, and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This explanatory memorandum contains information for the Select Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 From 1 April 2022, the use of rebated diesel and rebated biofuels will be limited to specific accepted uses, when used in certain vehicles and machines. This instrument and the Hydrocarbon Oil Duties (Miscellaneous Amendments) Regulations 2022 make consequential amendments to regulations relating to hydrocarbon oil and sets out the transitional arrangements to complete the implementation of these changes. This instrument focuses on changes to rebated fuels and sets out transitional provisions to allow for businesses to adjust to the new restrictions to the use of rebated fuel when the changes come into force in April 2022.
- 2.2 All changes take effect on 1 April 2022. Further details about these amendments are set out in section 7 below.

**3. Matters of special interest to Parliament**

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

- 3.1 This instrument makes provision by reference to things to be specified in notices published by the Commissioners for HMRC. Regulation 5 amends the Hydrocarbon Oil (Payment of Rebates) Regulations 1996 (SI 1996/2313) to provide that the forms required to provide HMRC with estimates of the volume of rebated fuel to be used will be specified in such notices. There is a need for explicit vires to sub-delegate. The relevant parts of regulation 5 are made under section 45 of the Taxation (Cross-border Trade) Act 2018 and section 48 (11)(b) of that Act provides that the power to make regulations under section 45 includes power to make provision to things specified in a notice published in accordance with the regulations. The notices will be published on <https://www.gov.uk/government/collections/oils-notices> by the time the regulations come into force. A person unable to access the notices electronically may access them in hard copy by post free of charge on application to 0300 2003700.
- 3.2 The amendments made to the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 (S.I. 2004/2065) by this instrument include the correction of a minor error. HMRC has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar on this matter and has not applied the free issue procedure on the basis that it would be disproportionate to do so given the nature of the sole correcting provision and the proportion that it represents of the whole instrument.

#### **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 and the Hydrocarbon Oil Duties (Miscellaneous Amendments) Regulations 2022 are being made to complete the implementation of changes to restrict the use of rebated diesel and rebated biofuels to a limited number of accepted uses, when used in certain vehicles and machines, from 1 April 2022. The changes being introduced also include provision to make biodiesel used in heating subject to fuel duty for the first time. Primary legislation covering these changes is included in Finance Acts 2021 and 2022. This instrument makes consequential amendments and transitional provisions to regulations related to hydrocarbon oils and takes effect from 1 April 2022.
- 6.2 The Hydrocarbon Oil Duties Act 1979 (HODA) covers United Kingdom (UK) law on the taxation of hydrocarbon oils, including diesel used on and off road. The primary legislative changes required to HODA are contained in Finance Acts 2021 and 2022. This instrument makes use of the following powers:
- section 6A of HODA confers powers on the Treasury to make an order to charge excise duty on fuel substitutes
  - section 102 of the Finance Act 2021 confers powers on the Treasury to make consequential and transitional provisions in relation to the use of rebated fuel as set out in Schedule 21 to that Act
  - section 76 of the Finance Act 2022 confers powers on the Treasury to make consequential and transitional provisions in relation to the use of rebated fuel as set out in Schedule 11 to that Act, and
  - sections 45 and 48 of the Taxation (Cross-Border Trade) Act 2018 confer powers on the Commissioners for HMRC to make regulations more generally for excise duty purposes.
- 6.3 It was not possible to combine this instrument and the Hydrocarbon Oil Duties (Miscellaneous Amendments) Regulations 2022 as that instrument is subject to scrutiny by both Houses of Parliament and this instrument is subject to scrutiny only by the House of Commons.

#### **7. Policy background**

##### *What is being done and why?*

- 7.1 Motor and heating fuels are liable to fuel duty, with only fuel taxed at the full rate of fuel duty allowed to be used in road vehicles. Some oils and fuels are taxed at a lower (rebated) rate - historically because fuel duty was intended to be a tax on road vehicles. This includes gas oil (diesel), which is chemically marked and dyed to enable law enforcement agencies to identify it as rebated fuel and detect when the wrong sort of diesel is being used, providing a deterrent to fuel fraud. The colour of

the dye in the UK means this fuel is called ‘red diesel’ (though marked fuel from other countries may be marked with a different colour). Gas oil intended for use in diesel engine road vehicles, otherwise known as ‘white diesel’ (because it has no marker or dye), has a fuel duty rate of 57.95 pence per litre (ppl). Rebated diesel is entitled to a rebate of 46.81ppl, giving it an effective duty rate of 11.14ppl.

- 7.2 At Budget 2020, the government announced that it would remove the entitlement to use rebated diesel and biofuels from most sectors from April 2022, and would make use of biodiesel used in heating subject to fuel duty from the same date. It consulted during 2020 to ensure that it had not overlooked any exceptional reasons why further sectors should be allowed to continue to use these fuels beyond April 2022.
- 7.3 At Spring Budget 2021 the government announced the final policy design of the changes, as set out in the summary of responses to the consultation. This included restricting the use of rebated diesel and biofuels from 1 April 2022 to certain accepted uses as set out in the interim guidance.
- 7.4 The changes also extend fuel duty to fuel substituting for diesel when used for heating, applying the rebated duty rate to substitutes used for non-commercial heating and the full rate of duty when used for commercial heating. This aligns the treatment of a fuel substituting for diesel with the treatment of diesel.
- 7.5 The changes included in this instrument, along with those included in the Hydrocarbon Oil Duties (Miscellaneous Amendments) Regulations 2022, make changes to secondary legislation needed to supplement the primary legislation changes included in Finance Acts 2021 and 2022. This instrument also makes transitional arrangements.
- 7.6 This instrument makes consequential amendments to relevant hydrocarbon oil regulations to implement the restrictions on the use of rebated fuel, including:
  - extending existing powers related to the inspection, testing, sampling of oil, bioblend or bioethanol blend in the fuel supply to apply to any vehicle, machine, vessel or appliance
  - extending provisions by applying the appropriate excise duty rate for fuel substitutes, additives and extenders to heating systems
  - clarifying that the excise duty rate for a fuel substitute to be used in a diesel engine is that specified for heavy oil in primary legislation minus the rate of rebate allowable
  - amending provisions on the designation of markers to allow for fuel to be detected when used other than for excepted machines
  - extending provisions for the repayment of rebates to allow HMRC to license use of rebated fuel in any non-excepted machine
  - extending the provisions relating to the labelling of delivery points for marked fuel to require delivery notes to state that rebated fuel is not to be used other than in an excepted machine
  - extending provisions relating to record-keeping for fuel substitutes used in heating systems, and
  - aligning the availability of relief from excise duty for oil used to generate electricity with the changes to the availability of a rebate.

- 7.7 The instrument also makes transitional provisions to allow for businesses to adjust to the new restrictions to the use of rebated fuel when it comes into force in April 2022, including:
- allowing for rebated fuels lawfully put in the fuel tanks of machines and vehicles before the change on 1 April 2022 to be used up after that date
  - allowing for rebated fuel obtained before Royal Assent to Finance Act 2021 for generating stand-by power and powering critical equipment to be used up after 1 April 2022, and
  - providing for the forfeiture of rebated fuel taken into vehicles that were ‘excepted vehicles’ before 1 April 2022, but which have changed use and are not ‘excepted machines’ under Schedule 1A to HODA.
- 7.8 These tax changes will ensure that most current users of rebated diesel will use fuel taxed at the standard rate for diesel from April 2022, like motorists, which more fairly reflects the harmful impact of the emissions they produce. Restricting use of rebated diesel and biofuels, including marked oils, will also help to ensure that the tax system incentivises users of polluting fuels like diesel to improve the energy efficiency of their vehicles and machinery, invest in cleaner alternatives, or just use less fuel. This will contribute towards the UK’s climate change and air quality targets.

## **8. European Union Withdrawal and Future Relationship**

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

## **9. Consolidation**

- 9.1 There are no plans to consolidate this instrument as it makes only modest changes to several other instruments.

## **10. Consultation outcome**

- 10.1 The government consulted on the changes to rebated fuel use in summer 2020 and published the summary of responses to the consultation at Spring Budget 2021. These are available on the website at: [Consultation on reforms to the tax treatment of red diesel and other rebated fuels - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/consultation-on-reforms-to-the-tax-treatment-of-red-diesel-and-other-rebated-fuels).
- 10.2 The draft instrument was exposed to trade representative bodies affected by the changes between 25 January and 4 February 2022 and comments received were considered in finalising the instrument.

## **11. Guidance**

- 11.1 HMRC has published interim guidance about the changes to rebated fuel use from 1 April 2022 and is available on website at: [Changes to rebated fuels entitlement from 1 April 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/changes-to-rebated-fuels-entitlement-from-1-april-2022).
- 11.2 Excise public notices covering policy relating to rebated fuels (separate from those notices made under section 45 of the Taxation (Cross-border Trade) Act 2018, which have the force of law) will be updated and published to coincide with the introduction of the changes. They do not have the force of law.

## **12. Impact**

- 12.1 There is no significant administrative impact on business, charities or voluntary bodies. Fuel users from these sectors who will no longer be allowed to use rebated fuels and will need to use fully duty paid diesel and biofuels, where they are unable to switch to cleaner technology, which will increase their fuel costs. There may be small number of businesses who will require a licence from HMRC to continue using rebated fuel for exceptional reasons or to manage large volumes of surplus fuel stocks after the rules change. Before the licence is granted, they will need to pay the duty difference between the rebated and non-rebated rate. There may be some costs for these businesses with applying for a licence and submitting annual returns.
- 12.2 There is no significant administrative impact on the public sector. Fuel users from this sector will no longer be allowed to use rebated fuels for all their operations and will need to use fully duty paid diesel and biofuels in most cases, which will increase their fuel costs.
- 12.3 A Tax Information and Impact Note covering this instrument was published alongside Finance Bill 2021-22 and is available on the website at [Changes to rebated fuels entitlement from 1 April 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/101234/Changes_to_rebated_fuels_entitlement_from_1_April_2022_-_GOV.UK_(www.gov.uk).pdf). It remains an accurate summary of the impacts that apply to this instrument.

## **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 impact on those small businesses no longer allowed to use rebated fuels who will need to use fully duty paid diesel, although it will increase their fuel costs.
- 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 affected sectors in the summer of 2020 (see paragraph 10.1).

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation will be undertaken through information collected on fuel duty and communication with affected sectors no longer allowed to use rebated fuels.
- 14.2 The 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 Priti Khatri at the HMRC Telephone: 03000 577065 or email: [priti.khatri@hmrc.gov.uk](mailto:priti.khatri@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 Helen Whately MP, Exchequer Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.