EXPLANATORY MEMORANDUM TO

THE EXCISE DUTIES (SURCHARGES OR REBATES) (HYDROCARBON OILS ETC.) ORDER 2022

2022 No. 365

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) 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. Purpose of the instrument

2.1 This instrument will reduce excise duty on products1 within scope of the Hydrocarbon Oil Duties Act 1979 (HODA) by either 5 pence per unit, or by 8.63% if a 5p reduction in duty would be above the 10% maximum adjustment set in the Excise Duties (Surcharges or Rebates) Act 1979, or by 5% for Aviation Gasoline. A 5 pence per litre reduction in duty on unleaded petrol and diesel is equal to 8.63% and as these are the main fuels used in the UK this percentage was chosen to reduce duties where a 5p per litre or kilogram (as appropriate) reduction would exceed 10% thereby ensuring consistency. Any rebates allowed by HODA will be changed to reflect the reduction in duty liability introduced by this instrument so that the duty charged on these fuels is reduced by 8.63%. The changes take effect at 18:00 on 23 March 2022 and will last for 12 months only.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 The instrument will come into force shortly after it has been laid. The convention of leaving 21 days between a statutory instrument being laid and coming into force will, unfortunately, be breached. This is considered to be justified because the current unique circumstances are affecting the price of oil now and it is therefore deemed imperative that fuel duty, the cost of which is ultimately passed through to consumers, is cut as soon as possible. The short notice between laying this instrument and commencement should not adversely affect businesses. Rather it allows businesses and individuals to benefit from a reduced duty rate on fuel as soon as possible.

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

[1] Unleaded petrol; Light oil other than unleaded petrol; Heavy oil (diesel); Aviation gasoline; Biodiesel; Bioblend; Bioethanol; Bioethanol blend; Aqua methanol; Liquified Natural Gas (LNG); Road fuel gas other than natural road fuel gas (Liquified Petroleum Gas); Fuel oil; Marked gas oil (red diesel); Kerosene; Heavy oil used for heating; Light oil used as furnace fuel; and biodiesel not used for fuel as a road vehicle, propelling a private pleasure craft, or an additive or extender to fuel used for those two purposes.

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 Sections 1(2) and 2(3) of the Excise Duties (Surcharges or Rebates) Act 1979 allows the Treasury to provide for a decrease or increase of up to 10% in liability to any duty chargeable by virtue of the HODA (or of any right to drawback, rebate or allowance in respect of such duties) via an order. This instrument can have effect for up to 12 months.

6.2 In the case of rebated fuels, section 1(4) of the Excise Duties (Surcharges or Rebates) Act 1979 states: "in calculating the amount to be adjusted any adjustment under this section of the liability to the duty shall be disregarded". In HODA, the rebates are set by reference to the underlying rate of duty that applies to the product, which are also set in the HODA. The adjusted rebate (as provided for by article 4 of this instrument) is also calculated by reference to the underlying rate of duty that applies to the product set in HODA, and not by reference to that rate as adjusted by article 3 of this instrument. The percentage addition to the right to rebate is calculated accordingly. Article 4 of this instrument adjusts the rebates for rebated fuel, and consequently the rates of duty payable for rebated fuels, independently of article 3.

7. Policy background

What is being done and why?

7.1 The Chancellor of the Exchequer has decided to decrease the rate of fuel duty by 5p, or by 8.63% if this decrease would be greater than the maximum of 10% permitted by the Excise Duties (Surcharges or Rebates) Act 1979. This is in recognition of the unique circumstances that are currently pushing up fuel prices to unprecedented levels. To ease this extra cost on households and businesses the Chancellor has decided to reduce the amount of fuel duty payable as soon as possible and has therefore decided to use the government's powers in the Excise Duties (Surcharges or Rebates) Act 1979 to adjust the liability, rather than to reduce rates later via a future Finance Bill.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 HODA currently requires the payment of duty on hydrocarbon oils imported or produced in the UK for use within the UK. These hydrocarbon oil products are generally used to power an engine, motor or other machinery. The level of liability to duty before this instrument takes effect varies from 67.67ppl for leaded petrol to nil for kerosene used for home heating.

Why is it being changed?

7.3 All duty rates in HODA are decreased by 5 pence per litre or kilogram (as appropriate), or by 8.63% if this would result in a duty decrease in excess of 10% (the maximum permitted by the Excise Duties (Surcharges or Rebates) Act 1979). This change is being made to reduce the taxation on fuel that is ultimately paid by consumers and businesses.

What will it now do?

7.4 The effect of the instrument will be to lower the duty rate paid by importers and producers of hydrocarbon oil products intended for the UK market.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union. All duty rates following the cut will be above the minimum rates set in the Energy Taxation Directive (2003/96/EC) and therefore the instrument meets the UK government's commitment in Article 8 of the Protocol on Ireland/Northern Ireland in the European Union Withdrawal Agreement that this directive shall apply to the UK in respect of Northern Ireland.

9. Consolidation

9.1 There are no plans to consolidate this instrument.

10. Consultation outcome

10.1 This instrument changes liabilities to duty and this is a matter for the Chancellor. The government does not consult on tax rates as these are commercially sensitive.

11. Guidance

11.1 Guidance published on the fuel duty section of gov.uk will be updated and published to coincide with the introduction of the change.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note (TIIN) will be published alongside the instrument at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

13.1 The legislation activities that are undertaken by small businesses.

13.2 The legislation will reduce the cost of fuel and so benefit small businesses that use fuel for business activities, thereby reducing their operating costs.

14. Monitoring & review

14.1 This measure will be monitored through information collected from tax receipts. Continued collaboration with Department for Transport will also allow monitoring of traffic levels and emissions

15. Contact

15.1 Andy Wiggins at Her Majesty's Revenue and Customs on 07469 023019 or email: andy.wiggins@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Emily Antcliffe, Director for Indirect Tax, at Her Majesty's Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Rishi Sunak MP, Chancellor of the Exchequer, at Her Majesty's Treasury can confirm that this Explanatory Memorandum meets the required standard.