

SCHEDULES

SECOND SCHEDULE

Section 9.

SUPPLEMENTARY PROVISIONS AS TO MARKING OF HEAVY OILS

PART I

REGULATIONS

The purposes for which regulations may be made by virtue of subsection (3) of section nine of this Act are the following:—

- (a) specifying the substances which are to be prescribed markers for the purposes of that section ;
- (b) providing that the presence of a marker shall be disregarded if the proportion in which it is present is less than that prescribed for the purposes of this paragraph ;
- (c) requiring as a condition of allowing rebate on any heavy oils, subject to any exceptions provided by or under the regulations, that there shall have been added to those oils, at such time, in such manner and in such proportions as may be prescribed, one or more prescribed markers, with a prescribed colouring substance (not being a prescribed marker), and that a declaration to that effect is furnished ;
- (d) prohibiting the addition to any heavy oils of any prescribed marker or prescribed colouring substance except in such circumstances as may be prescribed ;
- (e) prohibiting the removal from any heavy oils of any prescribed marker or prescribed colouring substance;
- (f) prohibiting the addition to heavy oils of any substance, not being a prescribed marker, which is calculated to impede the identification of a prescribed marker;
- (g) regulating the storage or movement of prescribed markers and of heavy oils in respect of which rebate has been allowed;
- (h) requiring any person who adds a prescribed marker to any heavy oils to keep in such manner and to preserve for such period as may be prescribed by the regulations such accounts and records in connection with his use of that marker as may be so prescribed, and requiring the production of the accounts and records;
- (i) authorising the entry and inspection of premises, other than private dwelling houses, and authorising, or requiring the giving of facilities for, the inspection of heavy oils found on any premises entered or of oils forming part of the fuel supply of any vehicle and the taking of samples of any oils inspected;
- (j) requiring, either generally or as respects any prescribed description of vehicle, that a vehicle constructed or adapted for use on roads and for which heavy oils can be used as fuel shall display the prescribed mark in the prescribed manner, and that the mark shall be kept unobscured and in such a state as to be easily distinguishable ;
- (k) requiring the production of books or documents relating to the sale, purchase, or disposal of heavy oils ;
- (l) requiring, in such circumstances or subject to such exceptions as may be prescribed, that any drum, storage tank, delivery pump or other container or outlet which contains

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- any heavy oils in which a prescribed marker is present shall be marked in the prescribed manner to indicate that the oils are not to be used as road fuel;
- (m) requiring any person who sells any heavy oils in which a prescribed marker is present to deliver to the buyer a document containing a statement in the prescribed form to the effect that the oils are not to be used as road fuel ;
 - (n) prohibiting the sale for use as fuel for any vehicle, being a vehicle to which section two hundred of the Act of 1952 applies, of any heavy oils the colour of which would prevent any prescribed colouring substance from being readily visible if present therein ;
 - (o) prohibiting the importation of heavy oils in which any prescribed marker, or any other substance which is calculated to impede the identification of a prescribed marker, is present;
 - (p) prohibiting persons, in such circumstances as may be specified in the regulations, from selling heavy oils in respect of which rebate has been allowed and not repaid, except under and in accordance with licences granted by the Commissioners.

In this Part of this Schedule " prescribed " means prescribed by such regulations as aforesaid; and references in this Part of this Schedule to the use of oils as fuel for a vehicle shall be construed in accordance with subsection (1) of section seven of the Finance Act, 1959.

PART II

SAMPLING

- 1 The person taking a sample—
 - (a) if he takes it from a motor vehicle, shall if practicable do so in the presence of the owner or person for the time being in charge of the vehicle ;
 - (b) if he takes the sample on any premises but not from a motor vehicle, shall if practicable take it in the presence of the occupier or person for the time being in charge of those premises.
- 2 (1) The result of an analysis of a sample shall not be admissible on behalf of the prosecution in any proceedings in respect of an offence under section two hundred or two hundred and eight of the Act of 1952 (which respectively impose restrictions on the use and mixing of heavy oils in respect of which rebate has been allowed and not repaid) or under any regulations made under section one hundred and ninety-eight of that Act unless the analysis was made by an authorised analyst and the requirements of the foregoing paragraph (where applicable) and of the following provisions of this paragraph have been complied with.
 - (2) The person taking a sample must at the time have divided it into three parts (including the part to be analysed), marked and sealed or fastened up each part, and—
 - (a) delivered one part to the owner or person in charge of the vehicle or, as the case may be, the occupier or person in charge of the premises, if he requires it; and
 - (b) retained one part for future comparison.
 - (3) Where it was not practicable to comply with the relevant requirements of paragraph 1 of this Schedule, the person taking the sample must have served notice on the owner or person in charge of the vehicle or, as the case may be, the occupier of the premises informing him that the sample has been taken and that one part of it is available for delivery to him, if he requires it, at such time and place as may be specified in the notice.

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3 In any such proceedings as are mentioned in sub-paragraph (1) of the foregoing paragraph a certificate purporting to be signed by an authorised analyst and certifying the presence of any substance in any such sample of heavy oils as may be specified in the certificate shall be evidence, and in Scotland sufficient evidence, of the facts therein stated:

Provided that (without prejudice to the admissibility of the evidence of the analyst, which shall be sufficient in Scotland as well as in England) such a certificate shall not be admissible as evidence—

- (a) unless a copy thereof has, not less than seven days before the hearing, been served on the person charged with the offence; or
- (b) if that person, not less than three days before the hearing or within such further time as the court may in special circumstances allow, serves notice on the prosecutor requiring the attendance at the hearing of the person by whom the analysis was made.

- 4 (1) Any notice required or authorised to be given under this Schedule shall be in writing.
- (2) Any such notice shall be deemed, unless the contrary is shown, to have been received by a person if it is shown to have been left for him at his last-known residence or place of business in the United Kingdom.
- (3) Any such notice may be given by post, and the letter containing the notice may be sent to the last-known residence or place of business in the United Kingdom of the person to whom it is directed.
- (4) Any such notice given to the secretary or clerk of a company or body of persons (incorporated or unincorporated) on behalf of the company or body shall be deemed to have been given to the company or body ; and for the purpose of the foregoing provisions of this paragraph any such company or body of persons having an office in the United Kingdom shall be treated as resident at that office or, if it has more than one, at the registered or principal office.
- (5) Where any such notice is to be given to any person as the occupier of any land, and it is not practicable after reasonable inquiry to ascertain—
- (a) what is the name of any person being the occupier thereof, or
 - (b) whether or not there is a person being the occupier thereof,
- the notice may be addressed to the person concerned by any sufficient description of the capacity in which it is given to him.
- (6) In any case to which the foregoing sub-paragraph applies, and in any other case where it is not practicable after reasonable inquiry to ascertain an address in the United Kingdom for the service of a notice to be given to a person as being the occupier of any land, the notice shall be deemed to have been received by the person concerned on being left for him on the land, either in the hands of a responsible person or conspicuously affixed to some building or object on the land.
- (7) The foregoing provisions of this paragraph (other than sub-paragraph (1)) shall not affect the validity of any notice duly given otherwise than in accordance with those provisions.

5 In this Part of this Schedule the expression " authorised analyst" means the Government Chemist or a person acting under his direction, the Government Chemist for Northern Ireland or a person acting under his direction, any chemist authorised by the Treasury to make analyses for the purposes of this Schedule, or

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any other person appointed under section eighty-nine of the Food and Drugs Act, 1955, section twenty-seven of the Food and Drugs (Scotland) Act, 1956, or section thirty-one of the Food and Drugs Act (Northern Ireland), 1958, as a public analyst or deputy public analyst.

- 6 References in this Part of this Schedule to the taking of a sample or to a sample shall be construed respectively as references to the taking of a sample in pursuance of regulations made by virtue of section nine of this Act and to a sample so taken.