

EXPLANATORY MEMORANDUM TO
THE HYDROCARBON OIL, BIOFUELS AND OTHER FUEL SUBSTITUTES
(DETERMINATION OF COMPOSITION OF A SUBSTANCE AND MISCELLANEOUS
AMENDMENTS) REGULATIONS 2008

2008 No. 753

1. 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.

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

2. Description

2.1 This instrument, which, apart from regulations 3 and 8(3) (which come into force on 9th April 2008), comes into force on 1 April 2008, prescribes the purposes, pursuant to the power contained in section 20AC¹ of the Hydrocarbon Oil Duties Act 1979 (HODA), for which the Commissioners may determine the proportion of any substance that is biodiesel or bioethanol.

2.2 It also makes amendments to a number of Regulations which follow from the simplification of the hydrocarbon oil duty rate structure in HODA, the introduction of a rebated rate of excise duty on biodiesel and bioblend used other than as fuel for road vehicles and the amendment of section 20A of HODA (mixing: adjustment of duty) by resolutions of the House of Commons passed on 18th March 2008 under section 1 of the Provisional Collection of Taxes Act 1968.

2.3 Finally, it corrects a drafting error made in a previous instrument.

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

3.1 It has been necessary to breach the “21 day rule”. This is because the amendments made by this instrument are a Budget measure. It was not possible to lay the instrument until after the changes were announced on Budget Day and, in relation to provisions that depend on new regulation making powers or are a consequence of amendments made to HODA, until a resolution was passed under section 1 of the Provisional Collection of Taxes Act 1968 on 18th March providing for those powers and making those amendments.

3.2 Apart from regulations 3 and 8(3) (which come into force on 9th April so as to comply with the 21 day rule) the provisions form part of a Budget “package” and it is necessary for them to come into force on 1st April to coincide with the amendments made to HODA and the introduction of the Renewable Transport Fuel Obligation (see section 7 below).

3.3 Section 20AC of HODA provides a new Regulation making power and, accordingly, this is the first occasion on which this power has been exercised.

¹ Section 20AC was inserted by a resolution of the House of Commons passed on 18th March 2008 under section 1 of the Provisional Collection of Taxes Act 1968 (c.2). This resolution has temporary statutory effect as provided for by section 1.

3.4 Regulation 8(3) of this instrument corrects a drafting error made when regulation 4(3) of the Biofuels and Hydrocarbon Oil Duties (Miscellaneous Amendments) Regulations 2007 (SI 2007/3307) amended regulation 19A(5) of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 (S.I.2004/2065). This error was reported by the Committee in its Seventh Report of the 2007-08 Session. This instrument is being issued free of charge to all known recipients of S.I.2007/1640 and 2007/3307.

4. Legislative Background

4.1 Section 6 (1A) of HODA, 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 18th March 2008 under section 1 of the Provisional Collection of Taxes Act 1968. That resolution has temporary statutory effect as provided for by section 1. 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 and replaced with a freestanding rate, with effect from 1st April.

4.2 As a result, the number of different rates of duty specified in section 6(1A) of HODA are reduced to three. These are for unleaded petrol, for light oil other than unleaded petrol and for heavy oil. Regulations 8(5)(a)(ii) and (b), 11 and 12 make amendments to other Regulations as a result of this change. Similar amendments are made to the Other Fuel Substitutes (Rates of Excise Duty etc.) Order 1995 by S.I. 2008 No. 754, in relation to which there is a separate Explanatory Memorandum.

4.3 Sections 6AC and 6AF of HODA provide a power to the Commissioners to make regulations to provide for –

- (i) references, or specified references, in HODA to hydrocarbon oil to be construed as including references to biodiesel, bioblend, bioethanol and bioethanol blend;
- (ii) references, or specified references, in HODA to duty on hydrocarbon oil to be construed as including references to duty under sections 6AA (biodiesel), 6AB (bioblend), 6AD (bioethanol) and 6AE (bioethanol blend); and
- (iii) biodiesel, bioblend, bioethanol and bioethanol blend to be treated for the purposes of such provisions of HODA that may be specified as if they fell with a specified description of hydrocarbon oil.

By virtue of sections 6AC(2) and 6AF(2), where the effect of any provisions made under the above powers is to extend any power to make regulations, provision made in exercise of the power as extended may be contained in the same statutory instrument as the provision extending the power.

4.4 Regulation 8(2) of this instrument amends regulation 3 of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004 to extend the number of references to hydrocarbon oil in HODA which are to be construed as including references to biodiesel, bioblend and bioethanol blend, to treat bioblend as falling within the description of heavy oil for the purposes of section 17 of HODA (heavy oil used by horticultural producers) and to provide that references to the duty on hydrocarbon oil in

section 20AA(1)(a) of HODA (power to allow reliefs) shall be construed as including references to duty on bioblend and bioethanol blend.

4.5 Another resolution passed by the House of Commons on the 18th March under section 1 of the Provisional Collection of Taxes Act 1968 introduced new sections 14A to 14D into HODA (and made a number of consequential amendments) to provide for a rebate of duty on biodiesel and bioblend used other than as fuel for road vehicles. This instrument makes a number of amendments to other Regulations as a result of the introduction of those provisions.

4.6 Section 20A of HODA (mixing: adjustment of duty) was amended by the same resolution to provide for that section to apply where biodiesel, bioethanol, bioblend, bioethanol blend or hydrocarbon oil are the subject of approved mixing in a pipeline, as defined in that section. Regulation 4 of this instrument makes amendments to the Hydrocarbon Oil (Mixing of Oils) Regulations 1985 as a result of that amendment.

4.7 Section 20 AC of HODA was inserted by the same resolution. By virtue of the resolution, the section is treated as having come into force on 19th March 2008 and provides a power to the Commissioners for Her Majesty's Revenue and Customs to determine, for any prescribed purpose, in such way as they consider appropriate the proportion of any substance that is biodiesel or bioethanol. "Prescribed purpose" means a purpose prescribed by regulations that relates to any duty under HODA. Regulation 2 of this instrument prescribes the purposes.

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 (RTFO) from 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”. 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. The three existing duty rates for heavy oil (diesel) will be reduced to one. Sulphur-free diesel and ultra low sulphur diesel will no longer be sub-categories of heavy oil.

7.5 It is, therefore, necessary to make amendments to the Regulations referred to in this instrument by removing references to “sulphur-free petrol”, “ultra low sulphur petrol”, “leaded petrol”, “sulphur-free diesel” and “ultra low sulphur diesel” and replacing them with the appropriate simplified categories.

7.6 Mixtures of biodiesel and heavy oil are subject to excise duty at the heavy oil rate – currently, 56.94 pence per litre. The high rate of duty was introduced because of concerns that the biodiesel interfered with the markers in rebated gas oil. However this is no longer a concern and Budget 2007 announced that to encourage off-road biofuel use, the Government would reduce the current duty rate permanently for biofuel/rebated gas oil mixtures. The lower rate of duty on such blends will encourage the wider use of biofuels in off-road applications and help the industry prepare for the introduction of the RTFO by encouraging producers to blend or mix all fuel.

7.7 Another resolution passed by the House of Commons on 18th March 2008 under section 1 of the provisional Collection of Taxes Act 1968 amends HODA to introduce a rebated rate of duty on biodiesel and bioblend (a mixture of hydrocarbon oil and biodiesel) used other than as a road fuel. The provision in s 17A² of HODA which enables users of pure biodiesel in off-road applications to reclaim duty so that the effective rate of duty on such use of biodiesel is 3.13 ppl is repealed. This instrument makes amendments to other instruments arising from these changes and, in some cases, extends their scope so that they apply to biofuels i.e. biodiesel, bioblend, bioethanol and bioethanol blend.

7.8 The introduction of the RTFO will result in road fuels, and consequently some off-road fuels, containing a proportion of biodiesel or bioethanol. Because it is problematic to quantify the biodiesel/bioethanol component in blends/mixes for the purposes of calculating duty adjustments or repayment claims, this instrument, under the power conferred by section 20AC of HODA (which was inserted by the resolution referred to in paragraph 7.7) prescribes the purposes for which the Commissioners for Her Majesty’s Revenue and Customs can determine the proportion of any substance that is biodiesel or bioethanol.

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

9.1 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.

² Section 17A was inserted by the Finance Act 2002 (c.23), Schedule 2, paragraph 4.