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STATUTORY INSTRUMENTS

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**2005 No. 3472**

**EXCISE**

**The Hydrocarbon Oil (Registered  
Remote Markers) Regulations 2005**

*Made* - - - - *15th December 2005*  
*Laid before Parliament* *19th December 2005*  
*Coming into force* - - *10th January 2006*

The Commissioners for Her Majesty's Revenue and Customs make the following regulations in exercise of the powers conferred by sections 100G and 100H of the Customs and Excise Management Act 1979(1) and sections 20AA(1), (2) and (3), and 24(1) of the Hydrocarbon Oil Duties Act 1979(2):

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- (1) 1979 c. 2; sections 100G and 100H were inserted by the Finance Act 1991(c. 31), Schedule 4; section 100H was amended by the Finance (No. 2) Act 1992(c. 48), Schedule 1, paragraph 6 and Schedule 2, paragraph 4, and the Finance Act 2002(c. 23), Schedule 3, paragraph 2; section 1(1) (amended by the Commissioners for Revenue and Customs Act 2005(c. 11), Schedule 4, paragraph 22) defines “the Commissioners” (as meaning the Commissioners for Revenue and Customs), “registered excise dealer and shipper” and “revenue trader”. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005. Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (2) 1979 c. 5; section 20AA was inserted by the Finance Act 1989(c. 26), section 2(1), and amended by the Finance Act 1993(c. 34), Schedule 23, Part 1(4) and the Finance Act 2000(c. 17), section 10(3); section 24(1) was amended by the Finance Act 1981(c. 35), section 6(2), the Finance Act 1982(c. 39), section 4(3), the Finance Act 1987(c. 16), section 1(2), the Finance Act 1996(c. 8), section 5(5), section 7(2), and Schedule 41, Part 1, the Finance Act 1997(c. 16), section 7(7), and the Finance Act 2001(c. 9), section 3(2); section 1(2) defines “hydrocarbon oil”; section 27(1) defines “rebate” and “the Management Act”; section 27(2) provides for the Hydrocarbon Oil Duties Act 1979 to be construed as one with the Customs and Excise Management Act 1979(c. 2) and section 27(3) applies the definition of “the Commissioners” in that Act (“the Commissioners” means the Commissioners for Revenue and Customs); section 27(3) was amended by the Finance Act 1985(c. 54), Schedule 4, paragraph 3, the Finance Act 1997(c. 16), Schedule 6, paragraph 6(7), and the Finance Act 2002(c. 23), Schedule 3, paragraph 4. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005(c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

## PART 1

### PRELIMINARY, APPROVAL AND REGISTRATION

#### Citation and commencement

1. These Regulations may be cited as the Hydrocarbon Oil (Registered Remote Markers) Regulations 2005 and come into force on 10th January 2006.

#### Interpretation

2.—(1) In these Regulations—

“appropriate rebate” means the rebate that would have been allowed at the time the hydrocarbon oil was delivered for home use had it been marked as it is now marked including, where the case so requires, a rebate at such rate as appears to the Commissioners to be appropriate under section 11(5) of the Oil Act(3) (rebate on heavy oil);

“duty” means the excise duty charged on hydrocarbon oil by section 6(1) of the Oil Act(4) (excise duty on hydrocarbon oil);

“mark” means to add to hydrocarbon oil any marker prescribed by regulations made under section 24 of the Oil Act (control of use of duty-free and rebated oil);

“the owner” means the owner of hydrocarbon oil that has been marked by a registered remote marker;

“the Oil Act” means the Hydrocarbon Oil Duties Act 1979;

“registered remote marker” has the meaning given in regulation 3 below.

(2) References in these Regulations to “set-off” are references to the arrangements for set-off made by regulation 6 of the Excise Duties (Deferred Payment) Regulations 1992(5) (set-offs).

#### Approval and registration

3.—(1) For the purposes of section 100G of the Management Act (registered excise dealers and shippers), the Commissioners may approve revenue traders who intend to mark hydrocarbon oil and register them as registered excise dealers and shippers in accordance with section 100G(2) of the Management Act.

(2) A revenue trader who has been approved and registered in accordance with paragraph (1) above is a registered remote marker.

#### Certificates of registration

4.—(1) The Commissioners must furnish every registered remote marker with a certificate of registration.

(2) Every certificate of registration must contain the following particulars—

- (a) a unique reference number;
- (b) the name and (if different) the trading name of the registered remote marker;
- (c) the address of his principal place of business;

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(3) Section 11(5) was inserted by the Finance Act 2000(c. 17), section 10.

(4) Section 6(1) was amended by the Finance Act 1981(c. 35), section 4, the Finance Act 1982(c. 39), section 4, the Finance Act 1989(c. 26), section 1, the Finance Act 1990(c. 29), Schedule 19, Part 1, the Finance Act 1997(c. 16), section 7, and the Finance Act 1998(c. 36), section 6 (in the latter case, with effect from a date that has yet to be appointed).

(5) S.I. 1992/3152, amended by S.I. 1996/2537, 2004/2065.

- (d) particulars of the hydrocarbon oil that he may mark;
- (e) particulars of the premises and places where he may mark that oil; and
- (f) any other conditions or restrictions imposed by the Commissioners in the exercise of their discretion under section 100G(4) of the Management Act.

#### **Revocation or variation of approval and registration**

5.—(1) The Commissioners must give a registered remote marker not less than sixty days written notice if they intend to revoke his approval and registration or vary its terms.

(2) Paragraph (1) above does not apply if the Commissioners vary the terms of the approval and registration of a registered remote marker at his request.

(3) If the Commissioners vary the terms of the approval and registration of a registered remote marker, they must furnish him with a corrected certificate of registration.

#### **Privileges of a registered remote marker**

6.—(1) A registered remote marker may mark hydrocarbon oil after it has been delivered for home use.

(2) A registered remote marker may mark both hydrocarbon oil that he owns and hydrocarbon oil that he does not own.

#### **Withdrawal or restriction of privileges**

7.—(1) If the Commissioners give a registered remote marker notice in accordance with regulation 5 above, they may withdraw or restrict the privileges afforded by regulation 6 above until the revocation or variation takes effect.

(2) Privileges may be withdrawn or restricted with immediate effect, or with effect from a date specified in the written notice given in accordance with regulation 5 above.

(3) The Commissioners may not withdraw or restrict a privilege unless it appears to them that this is necessary to protect the revenues derived from the duty.

## **PART 2**

### **RELIEF FROM DUTY**

#### **General conditions and restrictions**

8.—(1) In addition to any conditions or restrictions imposed by the Commissioners under section 100G(4) of the Management Act, the approval and registration of a registered remote marker is subject to the conditions and restrictions imposed by or under this Part of these Regulations.

(2) The approval and registration of every registered remote marker is subject to the conditions and restrictions prescribed in a notice published by the Commissioners and not withdrawn by a further notice.

(3) A registered remote marker must not mark any description of hydrocarbon oil at any premises or place unless the Commissioners have given him written approval to mark that description of hydrocarbon oil at those premises or at that place.

(4) Every registered remote marker must give notice in writing to the Commissioners of any change in the information that he was required to furnish in his application for registration, within seven days of the change.

### **Conditions for relief to be allowed**

- 9.—(1) Relief is not allowed unless this regulation is complied with.
- (2) The registered remote marker must, for every batch of oil that he marks, complete those parts of a form provided by the Commissioners (“form HO9”) that are applicable to him.
- (3) If the registered remote marker is not the owner—
- (a) he must retain a copy of the form HO9 that he completes, and supply another copy to the owner, and
  - (b) the owner must complete those parts of the copy form HO9 he receives that are applicable to him.
- (4) The owner (whether or not he is also the registered remote marker who marked the hydrocarbon oil) must, without delay, furnish the Commissioners with a copy of the completed form HO9.
- (5) The registered remote marker and the owner must ensure that the particulars given are true and complete and do not include particulars of hydrocarbon oil that—
- (a) has already been included in a form HO9;
  - (b) was the subject of a rebate upon delivery for home use;
  - (c) has not been marked by a registered remote marker; or
  - (d) is intended for a use for which the appropriate rebate is not allowed.
- (6) The Commissioners may provide different forms HO9 for different purposes; in particular, they may provide forms that are suitable for electronic transmission.
- (7) A form HO9 is to be treated as having been provided by the Commissioners if they have approved it.
- (8) The registered remote marker and the owner must keep and preserve a copy of every form HO9 that they complete for at least three years after the hydrocarbon oil to which it relates was marked.

### **Security**

10. The Commissioners may require any registered remote marker to provide such security, or further security, as they may think appropriate to protect the revenues derived from the duty.

### **Relieved hydrocarbon oil to be treated as rebated oil**

11. Hydrocarbon oil in respect of which relief from duty has been allowed under this Part of these Regulations is to be treated for all the purposes of the Oil Act as oil on which the appropriate rebate has been allowed.

### **Relief**

- 12.—(1) Subject to the provisions of this Part of these Regulations relief from duty at a rate equivalent to the appropriate rebate is allowed if—
- (a) hydrocarbon oil is delivered for home use without there being allowed on that oil at the time of that delivery a rebate of duty,
  - (b) a registered remote marker has marked that oil with the prescribed markers and colouring substances in the prescribed manner and proportions, and
  - (c) the registered remote marker who marked that oil complied with any conditions or restrictions imposed on him—

- (i) by the Commissioners under section 100G(4) of the Management Act,
- (ii) by or under regulations 8(2) and (3), 9, and 10 above, and
- (iii) under regulation 8(4) above, insofar as the information relates to name, trading name or address of the registered remote marker.

(2) The relief allowed by this regulation shall take the form of an allowance to be set-off against duty payable to the Commissioners by the owner; and that allowance must be set-off against any duty that he becomes liable to pay until it is fully utilised.

(3) In this regulation—

“the prescribed manner and proportions” means the manner and proportions in which, in accordance with regulations made under section 24 of the Oil Act (control of use of duty-free and rebated oil), the prescribed markers and colouring substances are required to be added to hydrocarbon oil as a condition of allowing a rebate of duty on delivery for home use; and

“the prescribed markers and colouring substances” means the markers and colouring substances that are, in accordance with regulations made under section 24 of the Oil Act, required to be added to hydrocarbon oil as a condition of allowing a rebate of duty on delivery for home use.

### **Relief that is not allowed**

**13.**—(1) If it appears to the Commissioners that an amount of relief that the owner proposes to set-off is not allowed (“the disputed amount”) they may inform him that set-off is not permitted to the extent of the disputed amount.

(2) The notification given to the owner under paragraph (1) above must specify both the disputed amount and reasons why the relief is not allowed.

(3) If the owner has already set-off some or all of the disputed amount when he receives that notification, he must, without delay, inform the Commissioners in writing, specifying the amount set-off, the quantity of hydrocarbon oil concerned, and the date that that oil was marked.

(4) Nothing in this regulation prejudices—

- (a) the owner’s right to set-off an amount that the Commissioners subsequently determine is due to him;
- (b) the owner’s right to set-off an amount that a court or VAT and duties tribunal determines is due to him; or
- (c) the Commissioners’ right to make an assessment of the disputed amount in accordance with section 24(4A) of the Oil Act<sup>(6)</sup> or section 12A of the Finance Act 1994<sup>(7)</sup> (other assessments relating to excise duty matters).

## **PART 3**

### **AMENDMENTS TO OTHER REGULATIONS**

#### **The Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992**

**14.** For the definition “REDS” in regulation 2(1) of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992<sup>(8)</sup> (interpretation) substitute—

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<sup>(6)</sup> Section 24(4A) was inserted by the Finance Act 1997(c. 16), Schedule 6, paragraph 6(6).

<sup>(7)</sup> 1994 c. 9; section 12A was inserted by the Finance Act 1997(c. 16), Schedule 6, paragraph 1(1) and amended by the Finance Act 1998(c. 36), Schedule 2, paragraph 8.

<sup>(8)</sup> S.I. 1992/3135, relevant amending instruments are S.I. 1999/1278, 1999/1565.

“REDS means a registered excise dealer and shipper who is authorized, in the course of his business, to import without payment of excise duty excise goods from other member States, but who is not authorized to hold or consign those goods without first paying that duty;”.

### **The Excise Duties (Deferred Payment) Regulations 1992**

**15.** In regulation 6(1) of the Excise Duties (Deferred Payment) Regulations 1992 after “that Act,” insert “all sums to which he is entitled as relief in accordance with regulations made under section 20AA of that Act, all sums to which he is entitled to repayment under”.

### **Other Regulations**

**16.**—(1) In regulation 23(2) of the Warehousekeepers and Owners of Warehoused Goods Regulations 1999<sup>(9)</sup> omit the substituted definition “REDS”.

(2) Omit regulation 27 of the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999<sup>(10)</sup>.

*David Varney  
Paul R. C. Gray*

Two of the Commissioners for Her Majesty’s  
Revenue and Customs

15th December 2005

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<sup>(9)</sup> S.I. 1999/1278, to which there are amendments not relevant to these Regulations.

<sup>(10)</sup> S.I. 1999/1565.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations come into force on 10th January 2006. They provide the machinery, and prescribe the procedures to be followed, for the approval and registration of registered remote markers engaged in marking gas oil, kerosene, or light oil used as furnace fuel with approved fiscal markers as a condition of entitlement to relief from excise duty.

The Regulations further implement Article 14 of Council Directive [2003/96/EC](#) of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJNo. L283, 31.10.2003, p.51). That Article is concerned with exemptions from, and reductions in, excise duty on energy products; including oils that Council Directive [95/60/EC](#) on the fiscal marking of gas oils and kerosene (OJ No. L291, 6.12.1995, p.46) requires to be marked. Transposition notes for these Directives are available at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

### **Content of the Regulations:**

*Regulation 1* provides for citation and commencement.

*Regulation 2* defines certain terms used in the Regulations.

*Regulation 3* provides for the approval and registration of registered remote markers.

*Regulation 4* requires the Commissioners to provide each registered remote marker with a certificate of registration, containing the individual particulars of each registration.

*Regulation 5* regulates the revocation or variation of approval and registration.

*Regulation 6* specifies the privileges accorded to registered remote markers.

*Regulation 7* regulates the withdrawal or restriction of privileges.

*Regulation 8* is concerned with the general conditions and restrictions imposed on registered remote markers.

*Regulation 9* prescribes conditions that must be complied with for relief to be allowed.

*Regulation 10* enables the Commissioners to require financial security (bonds, guarantees etc).

*Regulation 11* provides for oil on which relief from excise duty has been allowed in accordance with the Regulations to be treated as oil on which a rebate has been allowed.

*Regulation 12* prescribes the circumstances in which such relief from excise duty is allowed, and the appropriate rate.

*Regulation 13* prescribes consequences for cases where relief is not allowed.

*Regulations 14 to 16* make amendments to the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992 (S.I. [1992/3135](#)), the Excise Duties (Deferred Payment) Regulations 1992 (S.I. [1992/3152](#)), the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 (S.I. [1999/1278](#)), and the Excise Goods (Sales on Board Ships and Aircraft) Regulations 1999 (S.I. [1999/1565](#)).

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of business, charities or voluntary bodies.