
STATUTORY INSTRUMENTS

2002 No. 1773

CUSTOMS AND EXCISE

The Hydrocarbon Oil (Marking) Regulations 2002

<i>Made</i>	- - - -	<i>16th July 2002</i>
<i>Laid before Parliament</i>		<i>16th July 2002</i>
<i>Coming into force</i>	- -	<i>1st August 2002</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 24(1) and 24A(3) of, and Schedule 4 to, the Hydrocarbon Oil Duties Act 1979⁽¹⁾; and additionally, being a department designated⁽²⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽³⁾ in relation to excise matters of the European Communities, in exercise of the powers conferred by that section, and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART I
PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Hydrocarbon Oil (Marking) Regulations 2002 and come into force on 1st August 2002.

Interpretation

2.—(1) In these Regulations—
“the Act” means the Hydrocarbon Oil Duties Act 1979;

(1) 1979 c. 5; section 24 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 1994 (c. 9), Schedule 4, paragraph 58, the Finance Act 1996 (c. 8), section 5(5) and section 7(2) and Schedule 41, Part I, the Finance Act 1997 (c. 16), section 7(7) and Schedule 6, paragraph 6(6), the Finance Act 2000 (c. 17), section 10(4) and by the Finance Act 2001 (c. 9), section 3(2); section 24A(3) was inserted by the Finance Act 1996, section 7(1); Schedule 4 was amended by the Finance Act 1981, section 6(3), the Finance Act 1982, section 4(6) and by the Finance Act 1996, Schedule 41, Part I; section 1(2) defines “hydrocarbon oil”; section 27(3) applies the definition of “the Commissioners” in section 1(1) of the Customs and Excise Management Act 1979 (c. 2); section 27(3) was amended by the Finance Act 1985 (c. 54), Schedule 4, paragraph 3 and the Finance Act 1997 (c. 16), Schedule 6, paragraph 6(7).

(2) S.I. 1980/865.

(3) 1972 c. 68.

“ASTM” means American Society for Testing and Materials;

“Colour Index” means the Colour Index, compiled by the Society of Dyers and Colourists and the American Association of Textile Chemists and Colorists, published 1997, ISBN 0 90195 671 6;

“the common fiscal marker” means N-Ethyl-N-[2-(1-isobutoxyethoxy)ethyl]-4-(phenylazo)aniline together with CI Solvent Yellow 124 as described in the Colour Index;

“coumarin” means 1:2 benzopyrone;

“dark oil” means heavy oil that is darker than ASTM colour 3.0 in the Table of Glass Colour Standards included in “Standard method of Test for ASTM Colour of Petroleum Products” adopted as a joint ASTM-IP standard with ASTM designation D 1500-98 and IP designation IP 196/97, which appears in “IP Standard Methods”, when the heavy oil and ASTM Colour 3.0 are compared in the manner described in that publication for that method of test;

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

“heavy oil vehicle” means a vehicle to which section 12 of the Act(5) (rebate not allowed on fuel for road vehicles) applies;

“IP” means Institute of Petroleum;

“IP Standard Methods” means “IP Standard Methods for Analysis and Testing of Petroleum and Related Products and British Standard 2000 Parts 2002”, 61st edition, May 2002, published by the Institute of Petroleum, ISBN 0 85293 348 7;

“kerosene” means heavy oil of which more than 50% by volume distils at a temperature not exceeding 240°C;

“marker” means, except where the context requires otherwise, a marker or colouring substance prescribed by these Regulations and includes, in regulation 10, a composite solution of the type referred to in regulation 9;

“oil” means hydrocarbon oil;

“quinizarin” means 1,4-dihydroxyanthraquinone;

“solvent red” means CI Solvent Red 24 as described in the Colour Index.

(2) Any reference in these Regulations to marked oil means oil to which a marker has been added and related expressions must be construed accordingly.

PART II

REQUIREMENT TO WORK

Prescribed markers and colouring substance

- 3.—(1) The following markers and colouring substance are prescribed by these Regulations—
- (a) for gas oil and light oil, the markers described in paragraph (2)(a) and (b) and the colouring substance described in paragraph (3);
 - (b) for kerosene, the markers described in paragraph (2)(a) and (c).
- (2) The markers are—

(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 I, the Finance Act 1997 (c. 16), section 7 and the Finance Act 1998 (c. 36), section 6.

(5) Section 12 was amended by the Finance Act 1996 (c. 8), section 5.

- (a) the common fiscal marker added in the proportion of not less than 6 kilograms per 1,000,000 litres of oil;
 - (b) quinizarin added in the proportion of not less than 1.75 kilograms per 1,000,000 litres of oil;
 - (c) coumarin added in the proportion of not less than 2 kilograms per 1,000,000 litres of oil.
- (3) The colouring substance is solvent red added in the proportion of not less than 4 kilograms per 1,000,000 litres of oil.

Marking required for rebate

4. Subject to Part III (Exceptions to marking requirements), no rebate of duty on the delivery for home use of—

- (a) gas oil under section 11 (1)(b) or (ba) of the Act(6); or
- (b) kerosene under section 11(1)(c) or 13AA(1) of the Act(7); or
- (c) light oil under section 14(1) of the Act;

may be allowed unless there is added to the oil, in accordance with these Regulations, the markers and, in the case of gas oil, the colouring substance, prescribed by regulation 3.

Marking required for delivery of oil without payment of duty

5. Subject to Part III (Exceptions to marking requirements), the Commissioners may not permit any gas oil or kerosene to be delivered for home use without payment of duty on that oil under section 9 of the Act(8), unless there is added to the oil, in accordance with these Regulations, the markers and, in the case of gas oil, the colouring substance, prescribed by regulation 3.

PART III

EXCEPTIONS TO MARKING REQUIREMENTS

Commissioners' power to waive marking

6. The Commissioners may waive the requirements of regulation 4 (marking required for rebate) and regulation 5 (marking required for delivery of oil without payment of duty) only where they are satisfied that it is necessary for technical reasons or for reasons of public health or safety.

PART IV

TIME AND MANNER OF MARKING

Application

7. This Part applies for the purpose of determining the time and manner in which any oil required to be marked by these Regulations is to be marked.

(6) Relevant amendments to section 11 are the Finance Act 1986 (c. 41), section 2, the Finance Act 1996 (c. 8), section 5, the Finance Act 1997 (c. 16), section 7 and Schedule 18, Part I and the Finance Act 2000 (c. 17), section 10.

(7) Section 13AA(1) was inserted by the Finance Act 1996, section 5.

(8) Section 9 was amended by the Excise Duty (Amendment of the Alcoholic Liquor Duties Act 1979 and the Hydrocarbon Oil Duties Act 1979) Regulations 1992 (S.I. 1992/3158), regulation 3.

Time of marking

8. Except as otherwise provided in regulations made by the Commissioners, oil must be marked before delivery for home use of that oil.

Use of composite solution

9. Any oil may be marked by the addition to it of a solution containing the markers.

PART V

STORAGE, LABELLING ETC

Storage of markers

- 10.—(1) The occupier of any premises where marking occurs must keep any marker—
- (a) separately from all other substances; and
 - (b) except when removed for immediate use, in containers bearing a description of their contents.
- (2) At the end of each month, the occupier of any premises where marking occurs must—
- (a) take stock of the markers that he stores for use or that are in use at those premises;
 - (b) make a written record of that stocktake;
 - (c) preserve that written record for not less than 6 years.

Storage of marked oil

11. Marked oil must be stored separately from unmarked oil.

Labelling of delivery points for marked oil

12. Any drum, storage tank or other container or any delivery pump or pipe must bear an indelible notice to the effect that—
- (a) where it contains, or is an outlet for, any gas oil or kerosene marked under regulation 4 (marking required for rebate), such oil is not to be used as road fuel;
 - (b) where it contains, or is an outlet for, any light oil marked under regulation 4 (marking required for rebate), such oil is to be used only as furnace fuel;
 - (c) where it contains, or is an outlet for, any oil marked under regulation 5 (marking required for delivery without payment of duty), such oil is not to be used as fuel for any engine, motor or other machinery or as heating fuel.

Particulars to be recorded on delivery notes

- 13.—(1) Any person who supplies—
- (a) gas oil marked under regulation 4 (marking required for rebate); or
 - (b) a quantity not exceeding two hundred and fifty litres of kerosene, marked under regulation 4 (marking required for rebate);

must provide to the recipient a delivery note bearing a statement to the effect that such oil is not to be used as road fuel.

(2) Any person who supplies light oil marked under regulation 4 (marking required for rebate) must provide to the recipient a delivery note bearing a statement to the effect that such oil is only to be used as furnace fuel.

(3) Any person who supplies oil marked under regulation 5 (marking required for delivery for home use without payment of duty) must supply to the recipient a delivery note bearing a statement to the effect that such oil is not to be used as fuel for any engine, motor or other machinery or as heating fuel.

PART VI PROHIBITIONS

Prohibitions relating to prescribed markers

- 14.—(1) No oil may be marked except in the circumstances prescribed by these Regulations.
- (2) No marker may be removed from any oil.
- (3) No substance calculated to impede the identification of any marker may be added to any oil.

Prohibition relating to other markers

15.—(1) No person may add any chemical identifier or dye other than a marker to any gas oil or kerosene required by these Regulations to be marked (other than gas oil or kerosene to which regulation 6 applies).

(2) Where any person contravenes this regulation, his contravention shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties)⁽⁹⁾ and any oil to which such a chemical identifier or dye has been added shall be liable to forfeiture.

Prohibition on importation of certain oil

16. No oil of a description required by these Regulations to be marked may be imported where there has been added any substance calculated to impede the identification of any marker.

Prohibition on the sale of dark oil

17. No dark oil may be sold as fuel for a heavy oil vehicle.

PART VII AMENDMENTS, OMISSIONS AND REVOCATIONS

The Hydrocarbon Oil Regulations 1973

- 18.—(1) Amend the Hydrocarbon Oil Regulations 1973⁽¹⁰⁾ as follows.
- (2) In regulation 2, omit—
- (a) the definition of “dark oil”; and
 - (b) the definition of “the duty deferment regulations”.

⁽⁹⁾ 1994 c. 9.

⁽¹⁰⁾ S.I. 1973/1311; amended by S.I. 1976/443, S.I. 1977/1868, S.I. 1981/1134, S.I. 1985/1033, S.I. 1985/1450, S.I. 1992/3149, S.I. 1993/2267, S.I. 1994/694, S.I. 1996/2313.

(3) For paragraph (1)(f) and paragraph (2)(b) of regulation 12 (delivery notes), substitute “if the oil is required by the Hydrocarbon Oil (Marking) Regulations 2002 to be marked, the statements required by regulation 13 of those Regulations”.

(4) Omit regulations 17 to 30A.

The Hydrocarbon Oil (Designated Markers) Regulations 1996

19.—(1) Amend regulation 2 (designation of markers) of the Hydrocarbon Oil (Designated Markers) Regulations 1996(**11**) as follows.

(2) In regulation 2(2)—

(a) for the second designated marker, substitute—

“N-Ethyl-N-[2-(1-isobutoxyethoxy)ethyl]-4-(phenylazo)aniline”; and

(b) omit the third designated marker.

Revocations

20.—(1) Revoke the Hydrocarbon Oil (Amendment) Regulations 1985(**12**).

(2) Revoke the Hydrocarbon Oil (Amendment) (No. 2) Regulations 1994(**13**).

New King’s Beam House,
22 Upper Ground,
London SE1 9PJ
16th July 2002

M J Eland
Commissioner of Customs and Excise

(11) S.I. 1996/1251.

(12) S.I. 1985/1033.

(13) S.I. 1994/694.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on 1st August 2002.

Purpose of the Regulations

These Regulations require the marking of gas oil, kerosene and light oil with one or more chemical markers and colouring substance as a condition of allowing specified rebates of, and, in the case of gas oil and kerosene, relief from, excise duty on that oil under specified provisions of the Hydrocarbon Oil Duties Act 1979 (c. 5) (“the Act”). The Regulations prescribe the markers and colouring substance and permit the Commissioners to waive the marking requirement in certain circumstances. The Regulations also prescribe the time and manner of marking and impose requirements as to the storage and labelling of containers of markers and marked oil. The Regulations also prohibit certain activities in relation to markers and marked oil.

The Regulations replace regulations 17 to 30A of the Hydrocarbon Oil Regulations 1973 (S.I. 1973/1311). The principal changes introduced by the Regulations are:

- (a) to prescribe an additional chemical marker, known as the common fiscal marker;
- (b) to require gas oil and kerosene that is delivered for home use without payment of excise duty under section 9 of the Act to be marked and to impose consequential requirements as to labelling of such oil and wording of delivery notes;
- (c) to permit the Commissioners to waive the requirement to mark oil only in certain circumstances.
- (d) to prohibit the addition of any chemical identifier or dye other than a marker to gas oil and kerosene required to be marked by the Regulations.

In part, the Regulations implement Council Directive 95/60/EC on the fiscal marking of gas oils and kerosene (OJ No L 291, 6.12.1995, p.46). The Directive requires member states to mark gas oil and kerosene subject to reduced rates of, or exempt from, excise duty with a common marker, known as the common fiscal marker. Commission Decision 2001/574/EC establishing a common fiscal marker for gas oils and kerosene (OJ No L 203, 28.7.2001, p.20) (as amended) establishes Solvent Yellow 124 as the common fiscal marker. The requirement to mark light oil imposed by the Regulations is not imposed by the Directive.

Regulation 15 was made under section 2(2) of the European Communities Act 1972 (c. 68).

A Transposition Note setting out how the Directive has been implemented may be obtained on the HM Customs & Excise website at www.hmce.gov.uk or from HM Customs & Excise, Oils Tax Practice, 3rd Floor West, Ralli Quays, 3 Stanley Street, Salford, M60 9LA. A copy has been placed in the library of each House of Parliament.

The Regulations have been notified to the European Commission and the other member states in accordance with Directive 98/34/EC of the European Parliament and of the Council (OJ No L 204, 21.7.1998, p.37) (as amended).

A “Joint Summary of Consultation Responses and Regulatory Impact Assessment” was published in April 2002 concerning the Government’s Oils Fraud Strategy. The Regulations form part of the new measures being adopted to combat such fraud. A copy can be obtained on the HM Customs & Excise website at www.hmce.gov.uk or from HM Customs & Excise, Oils Tax Practice at the address given above. A copy has been placed in the library of each House of Parliament.

Status: This is the original version (as it was originally made).

The Colour Index is compiled by the Society of Dyers and Colourists and the American Association of Textile Chemists and Colorists. The Society's address is P.O. Box 244, Perkin House, 82 Grattan Road, Bradford, BD1 2JB.

"IP Standard Methods" is published by the Institute of Petroleum, 61 New Cavendish Street, London, W1G 7AR.

Content of the Regulations

Regulation 1 provides for citation and commencement.

Regulation 2 defines certain terms used in the Regulations.

Regulation 3 prescribes the markers and colouring substance and the proportions in which they are to be added to specified oils.

Regulation 4 requires the marking of gas oil, kerosene and light oil as a condition of allowing specified rebates of duty on those oils.

Regulation 5 requires marking of gas oil and kerosene as a condition of allowing the delivery for home use without payment of duty on those oils.

Regulation 6 enables the Commissioners to waive marking requirements in specified circumstances.

Regulation 7 concerns the application of Part IV of the Regulations.

Regulation 8 requires oil, except as otherwise provided in regulations made by the Commissioners, to be marked before its delivery for home use.

Regulation 9 permits oil to be marked by the addition of a composite solution of markers.

Regulation 10 regulates the storage of markers and requires the occupier of any premises where marking occurs to take stock of the markers once a month and retain a written record of his stocktake.

Regulation 11 requires marked oil to be stored separately from unmarked oil.

Regulation 12 requires containers and delivery points of marked oil to bear certain notices.

Regulation 13 specifies the particulars to be recorded on delivery notes when marked oil is supplied.

Regulation 14 prohibits the marking of oil otherwise than as prescribed by the Regulations, the removal of markers from oil and the addition of substances calculated to impede the identification of markers to any oil.

Regulation 15 prohibits the addition of any chemical identifier or dye other than a marker to any gas oil or kerosene required to be marked by the Regulations, other than gas oil or kerosene to which regulation 6 applies and provides for a penalty for contravention and forfeiture of the oil.

Regulation 16 prohibits the importation of oil containing substances calculated to impede the identification of any marker.

Regulation 17 prohibits the sale of dark oil.

Regulation 18 omits regulations 17 to 30A of the Hydrocarbon Oil Regulations 1973 (S.I. 1973/1311) and makes certain consequential amendments to those Regulations.

Regulation 19 amends the Hydrocarbon Oil (Designated Markers) Regulations 1996 (S.I. 1996/1251).

Regulation 20 revokes the Hydrocarbon Oil (Amendment) Regulations 1985 (S.I. 1985/1033) and the Hydrocarbon Oil (Amendment) (No. 2) Regulations 1994 (S.I. 1994/694), both of which instruments amend regulations that are omitted by regulation 18.