

**EXPLANATORY MEMORANDUM TO
THE BIOFUELS AND OTHER FUEL SUBSTITUTES (PAYMENT OF
EXCISE DUTIES ETC) (AMENDMENT) REGULATIONS 2007**

2007 No. 1640

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. **Description**

These Regulations remove the obligations on very small producers of biofuels to register their production premises, make returns of biofuel produced and pay excise duty. They provide for small to medium size producers to make quarterly returns and pay duty quarterly - instead of monthly as at present. Large producers will continue to make monthly returns and monthly payments.

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

None

4. **Legislative Background**

4.1 These Regulations amend the Biofuels and Other Fuel Substitutes (Payment of Excise Duties) Regulations 2004 ("the principal Regulations"). For the most part, the powers exercised to make these Regulations are those in paragraphs 3 and 11 of Schedule 3 to the Hydrocarbon Oil Duties Act 1979 ("HODA"). Those powers apply to biofuels by virtue of sections 6AC(1)(a) and 6AF(1)(a) HODA and regulation 3(1)(e) of the principal Regulations. The different provisions made by the Regulations under the HODA powers in respect of the different classes of biofuel producers are made under section 6AC(4) and 6AF(4) HODA. Regulation 6 is made under the powers set out in section 118A(1) and (2) of the Customs and Excise Management Act 1979. Regulation 7 is made under sections 1(1), 1(3)(e) and 1(6)(a) of the Finance (No 2) Act 1992.

4.2 The main changes made to the principal Regulations are as follows. Regulation 8 read with regulation 8A restrict the liability of a producer to register biofuel production premises (registration is referred to as 'making entry' in the Regulations). Only those producers who meet either of two conditions are liable to register their premises. The first condition is that at the end of any calendar month a producer has produced 2,500 litres or more of biofuel over the previous 12 months. The second condition is that at any time there are reasonable grounds to believe a producer will produce 2,500 litres or more of biofuel in the following 12 months. If neither of those conditions is met a producer is not liable to register the production premises (and is referred

to as an exempt producer). Regulations 8A(2) and (3) specify the latest date by which a producer liable to register premises must register those premises. A producer who meets the first condition ceases to be liable if he satisfies the Commissioners that he will produce less than 2,500 litres of biofuel in the 12 months following the date on which he became liable. Regulation 8B provides that regulation 8A does not apply to a producer whose production premises are currently registered.

4.3 New regulation 8E makes provision corresponding to regulations 8 to 8D in respect of two or more producers who carry out production of biofuel at the same premises or sets of premises.

4.4 New regulation 8F provides for the Commissioners to cancel a registration where the Commissioners are satisfied that a producer has, or two or more producers have, produced less than 2,500 litres of biofuel in the 12 months preceding the proposed date of cancellation or would produce less than that amount in the 12 months following the proposed date of cancellation.

4.5 New regulation 13A requires exempt producers to keep at their production premises such records as the Commissioners specify in a public notice issued by them. The records must be preserved for 6 years or such shorter period as the Commissioners permit.

4.6 Regulation 17(1), as amended, prescribes an excise duty point (i.e. the time at which payment of excise duty must be made) in respect of biofuel produced by a producer at production premises which he is liable to register but which have not been registered. An excise duty point does not arise in relation to biofuel sent out by a producer who is an exempt producer.

4.7 Regulation 19 provides for producers whose premises are registered, but who are not large producers, to make quarterly returns of their biofuel production and quarterly payments of the excise duty chargeable - instead of monthly.

4.8 Regulation 19A imposes a duty on large producers to make monthly returns of biofuel production and pay duty monthly. These are producers who have been notified by the Commissioners that they are large producers. The Commissioners may notify a producer if his production of biofuel will be 450,000 litres or more in the 12 months immediately preceding notification or they have reasonable grounds to believe that his production will be 450,000 litres or more in the 12 months immediately following notification. The Commissioners may withdraw a notification if they are satisfied that production over the previous 12 months has been less than 450,000 litres and will not exceed that amount in the following 12 months.

5. Extent

These Regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy Background

7.1 The biofuels (and fuel additives) return has, until now, been submitted monthly, along with payment of duty. However, the biofuels regime contains many small producers - unlike the thinly populated hydrocarbon oils regime that includes the major producers and which contributes almost all of the total oils excise duty revenue. The number of those required to submit biofuels returns has been increasing rapidly, with no sign that this growth is about to slow.

7.2 HMRC consulted on these proposed changes in January and February this year, and the responses confirmed that significant commercial production is impossible below the 2,500 litre level, and so setting the lower threshold at that level only removes non-commercial producers from the register. It will, however, allow businesses, or potential businesses, to explore the feasibility of biofuel production before being obliged to register and pay duty.

7.3 HMRC's main aim is to reduce burdens on producers. Analysis of the total administration burden in making returns demonstrated that the total burden on all producers then completing them (in February this year) was £289,000. Introducing a registration de minimis at 2,500 litres per annum would give producers an estimated administration saving of £191,000, reducing the total burden to £98,000. Changing the frequency of returns from monthly to quarterly for most of those remaining on the register is expected to save a further estimated £32,000, reducing the total burden to £66,000.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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