

**2022 No. 234**

**EXCISE**

**The Hydrocarbon Oil Duties (Consequential Amendments and Transitional Provisions) Regulations 2022**

<i>Made</i> - - - -	<i>7th March 2022</i>
<i>Laid before the House of Commons</i>	<i>8th March 2022</i>
<i>Coming into force</i> - -	<i>1st April 2022</i>

The Treasury, in exercise of the powers conferred by section 6A of the Hydrocarbon Oil Duties Act 1979(a), section 102(3) and (4) of the Finance Act 2021(b) and section 76(3) and (4) of the Finance Act 2022(c), and the Commissioners for Her Majesty’s Revenue and Customs in exercise of the powers conferred by sections 45(1) and (2) and 48(11) of the Taxation (Cross-border Trade) Act 2018(d), make the following Regulations.

**PART 1**

**Introduction**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Hydrocarbon Oil Duties (Consequential Amendments and Transitional Provisions) Regulations 2022 and come into force on 1st April 2022.

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

**PART 2**

**Consequential amendments**

**Amendment of the Hydrocarbon Oil Regulations 1973**

2.—(1) The Hydrocarbon Oil Regulations 1973(f) are amended as follows.

(2) In regulation 2 (definitions)—

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- (a) 1979 c. 5. Section 6A was inserted by section 11 of the Finance Act (“FA”) 1993 (c. 34) and amended by section 11 of FA 2000 (c. 17), section 7 of FA 2002 (c. 23), sections 10 and 12 of FA 2004 (c. 12), paragraph 5 of Schedule 17 to FA 2016 (c. 24) and (with effect from 1st April 2022) paragraph 4 of Schedule 21 to FA 2021 (c. 26).
- (b) 2021 c. 26.
- (c) 2022 c. 3.
- (d) 2018 c. 22.
- (e) 1979 c. 5 (“HODA”).
- (f) S.I. 1973/1311; relevant amending instruments are S.I. 2008/753 and 2021/780.

- (a) omit the definition of “vessel”;
- (b) the remaining text becomes paragraph (1);
- (c) after the text that becomes paragraph (1) insert—
  - “(2) In this regulation “vessel” includes any tank or container for storing oil and any still or utensil in which oil may be processed.”.
- (3) In regulation 47 (authorised person’s rights of access)—
  - (a) for “any vehicle”, in each place it occurs, substitute “any relevant machine”;
  - (b) for “such vehicle” substitute “such machine”;
  - (c) for “a vehicle” substitute “a relevant machine”;
  - (d) for “the vehicle”, in each place it occurs, substitute “the machine”;
  - (e) after paragraph (5) insert—
    - “(5A) In this regulation “relevant machine” means a vehicle, vessel, machine or appliance.”.
- (4) In regulation 47, as it has effect in relation to private pleasure craft in Northern Ireland(a), omit paragraph (6).

### **Amendment of the Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995**

**3.—**(1) The Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995(b) is amended as follows.

- (2) In article 2(1) (interpretation)—
  - (a) after sub-paragraph (f) insert—
    - “(fa)“kerosene heating system” means a heating system which uses a furnace or boiler which is designed or adapted to use kerosene as fuel;”;
  - (b) after sub-paragraph (i) insert—
    - “(ia)“non-kerosene heating system” means a heating system which uses a furnace or boiler which is designed or adapted to use heavy oil other than kerosene as fuel;”.
- (3) In article 3(1) (determination of appropriate rate of duty)—
  - (a) at the end of sub-paragraph (a) omit “or”;
  - (b) after sub-paragraph (a) insert—
    - “(aa) for heating; or”;
  - (c) in the words after sub-paragraph (b) after “(a)” insert “or (aa)”.
- (4) In article 4 (rates of duty for fuel substitutes)—
  - (a) in paragraph (2)—
    - (i) after “heavy oil” insert “minus the applicable rate of rebate allowable under section 11 of the Act(c)”;

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(a) Regulation 1(3) of the Hydrocarbon Oil and Biofuels (Northern Ireland Private Pleasure Craft) Regulations 2021 (S.I. 2021/780) provides that the amendment of regulation 47 of the Hydrocarbon Oil Regulations 1973 made by regulation 9 only applies in relation to private pleasure craft in Northern Ireland.

(b) S.I. 1995/2716; amended by S.I. 2002/3042, 2004/2062, 2008/754 and 2014/470.

(c) “The Act” is defined in article 2(1)(a) of the Order as “the Hydrocarbon Oil Duties Act 1979”. Section 11 (rebate on heavy oil) was amended by section 2 of FA 1986 (c. 41), section 7 of FA 1997 (c. 16), section 10 of FA 2000, paragraph 3 of Schedule 2 to FA 2002, section 10 of FA 2004, section 13 of, and paragraph 25 of Schedule 6 to, FA 2008 (c. 9), section 121 of FA 2009 (c. 10) and section 179 of FA 2013 (c. 29).

- (ii) after sub-paragraph (a) insert—
  - “(aa) a non-kerosene heating system, the rate of duty shall be that specified by section 6 of the Act<sup>(a)</sup> for heavy oil minus the applicable rate of rebate allowable under section 11 of the Act;
  - (ab) a kerosene heating system, the rate of duty shall be that specified by section 6 of the Act for heavy oil minus the applicable rate of rebate allowable under section 11 of the Act;”;
- (b) in paragraph (3) after “engine” insert “or heating system”;
- (c) in paragraph (5)—
  - (i) after “engine”, in the first place it occurs, insert “or heating system”;
  - (ii) after “(a)” insert “, (aa), (ab)”.
- (5) In article 5 (rates of duty for additives or extenders)—
  - (a) in paragraph (2) after “engine” insert “or heating system”;
  - (b) in paragraph (5)(a) after “engine”, in both places it occurs, insert “or heating system”.

#### **Amendment of the Hydrocarbon Oil (Designated Markers) Regulations 1996**

**4.**—(1) The Hydrocarbon Oil (Designated Markers) Regulations 1996<sup>(b)</sup> are amended as follows.

(2) In regulation 2(1) (designation of markers) for “for road vehicles” substitute “other than for an excepted machine<sup>(c)</sup>”.

#### **Amendment of the Hydrocarbon Oil (Payment of Rebates) Regulations 1996**

**5.**—(1) The Hydrocarbon Oil (Payment of Rebates) Regulations 1996<sup>(d)</sup> are amended as follows.

- (2) In regulation 3(1) (interpretation), in the definition of “rebated heavy oil activity”—
  - (a) for “road vehicle (falling within that section)” substitute “vehicle, vessel, machine or appliance that is not an excepted machine”;
  - (b) after “vehicle”, in the second place it occurs, insert “, vessel, machine or appliance”.
- (3) In regulation 5 (estimates and payments)—
  - (a) in paragraph (2) for “numbered 1 in Schedule 1 to these Regulations” substitute “specified in a notice published by HMRC Commissioners”;
  - (b) in paragraph (3)—
    - (i) in sub-paragraph (a)—
      - (aa) for “the estimate at Part 2” substitute “the relevant part of the estimate”;
      - (bb) for “at Part 2(a) in” substitute “in the relevant part of”;
    - (ii) in sub-paragraph (b)—
      - (aa) for “the estimate at Part 3” substitute “the relevant part of the estimate”;
      - (bb) for “at Part 3(a) in” substitute “in the relevant part of”;
    - (iii) in sub-paragraph (c)—

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(a) Section 6 (excise duty on hydrocarbon oil) was amended by section 4 of FA 1981 (c. 35), section 4 of FA 1982 (c. 39), section 3 of FA 1990 (c. 29), section 7 of FA 1997 (c. 16), section 7 of FA 1998 (c. 36), sections 13 and 16 of, and paragraph 4 of Schedule 6 to, FA 2008, section 179 of FA 2013, and section 6 of the Taxation (Post-transition Period) Act 2020 (c. 26).

(b) S.I. 1996/1251, amended by S.I. 2002/1773 and 2015/36.

(c) “Excepted machine” is defined in section 27(1) of HODA. The definition of “excepted machine” was inserted by paragraph 20 of Schedule 21 to FA 2021 (c. 26).

(d) S.I. 1996/2313.

- (aa) in the words before paragraph (i), for “the estimate at Part 4” substitute “the relevant part of the estimate”;
- (bb) in paragraph (i), for “at Part 4(c) in” substitute “in the relevant part of”;
- (c) after paragraph (3) insert—
  - “(4) HMRC Commissioners must publish a notice specifying the form for the purposes of paragraph (2).”.
- (4) In regulation 6 (supplementary estimates, events and additional rebate payments and forms)—
  - (a) in paragraph (2)—
    - (i) omit “(which activity, respectively, is the subject of an entry in Part 2 or Part 3, or Part 4 of the estimate)”;
    - (ii) for “in that Part” substitute “in the relevant part”;
  - (b) in paragraph (3)—
    - (i) in sub-paragraph (a) for “Part 2 (for estimated gas oil consumption)” substitute “the part of the form for estimated gas oil consumption”;
    - (ii) in sub-paragraph (b) for “Part 3 (for estimated section 12 kerosene consumption)” substitute “the part of the form for estimated section 12 kerosene(a) consumption”;
    - (iii) in sub-paragraph (c), in the words before paragraph (i)—
      - (aa) for “Part 4 (for estimated section 13AA kerosene consumption)” substitute “the part of the form for estimated section 13AA kerosene consumption”;
      - (bb) omit “to those Regulations”;
  - (c) in paragraph (4)—
    - (i) in sub-paragraph (a) for “numbered 2 in Schedule 1 to those Regulations” substitute “specified in a notice published by HMRC Commissioners”;
    - (ii) in sub-paragraph (b)—
      - (aa) for “numbered 3 in Schedule 1 to these Regulations” substitute “specified in a notice published by HMRC Commissioners”;
      - (bb) for “following” substitute “relevant”;
      - (cc) omit the words in brackets after “the occurring event”;
  - (d) after paragraph (5) insert—
    - “(6) HMRC Commissioners must publish a notice specifying the forms for the purposes of paragraph (4)(a) and (b).”.
- (5) In regulation 8 (returns)—
  - (a) in paragraph (1)—
    - (i) omit “Part 1 of”;
    - (ii) for “numbered 4 in Schedule 1 to these Regulations” substitute “specified in a notice published by HMRC Commissioners”;
  - (b) in paragraph (2)(a)—
    - (i) omit “Part 1 of”;
    - (ii) for “Part 1”, in the second place it occurs, substitute “the estimate”;
  - (c) after paragraph (3) insert—
    - “(4) HMRC Commissioners must publish a notice specifying the form for the purposes of paragraph (1).”.

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(a) “Section 12 kerosene” is defined in regulation 3(1) of S.I. 1996/2313 as “heavy oil of the description given by paragraph (c) of section 11(1) of the Act” and “the Act” is defined as “the Hydrocarbon Oil Duties Act 1979”.

- (6) In regulation 9 (records to be kept by a licensed user)—
- (a) in paragraph (1) for “road vehicle falling within section 12 of the Act” substitute “non-excepted machine”;
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (a) for “road vehicle falling within section 12 of the Act” substitute “non-excepted machine”;
    - (ii) in sub-paragraph (b)(i) for “road vehicle” substitute “non-excepted machine”;
  - (c) in paragraph (3)—
    - (i) for “road vehicle”, in each place it occurs, substitute “non-excepted machine”;
    - (ii) in sub-paragraph (a) after “unregistered vehicle” insert “or a non-excepted machine that is not a road vehicle(a)”;
    - (iii) in sub-paragraph (d) for “vehicle”, in the second place it occurs, substitute “machine”;
  - (d) after paragraph (4) insert—
 

“(5) In this regulation “non-excepted machine” means any vehicle, vessel, machine or appliance that is not an excepted machine.”.
- (7) Omit Schedule 1 (forms).

#### **Amendment of the Hydrocarbon Oil (Marking) Regulations 2002**

- 6.—**(1) The Hydrocarbon Oil (Marking) Regulations 2002(b) are amended as follows.
- (2) In regulation 2(2) (interpretation) omit the definition of “heavy oil vehicle”.
  - (3) In regulation 12 (labelling of delivery points for marked oil), in paragraphs (a) and (aa), for “road fuel”, in each place it occurs, substitute “fuel other than for an excepted machine”.
  - (4) In regulation 13 (particulars to be recorded on delivery notes), in paragraph (1), in the words after sub-paragraph (c), for “road fuel” substitute “fuel other than for an excepted machine”.
  - (5) In regulation 15 (prohibition relating to other markers)—
    - (a) in paragraph (1) after “kerosene”, in both places it occurs, insert “, biodiesel”;
    - (b) in paragraph (2) after “may be,” insert “biodiesel or”.
  - (6) In regulation 17 (prohibition on the sale of dark oil), for “for a heavy oil vehicle” substitute “other than for an excepted machine”.

#### **Amendment of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004**

- 7.—**(1) The Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004(c) are amended as follows.
- (2) In regulation 2(1) (interpretation)—
    - (a) at the appropriate places insert—
      - ““kerosene heating system” means a heating system which uses a furnace or boiler which is designed or adapted to use kerosene as fuel;”;
      - ““light oil heating system” means a heating system which uses a furnace or boiler which is designed or adapted to use light oil as fuel;”;
      - ““non-kerosene heating system” means a heating system which uses a furnace or boiler which is designed or adapted to use heavy oil other than kerosene as fuel;”;

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(a) “Road vehicle” is defined in section 27(1) of HODA.

(b) S.I. 2002/1773. Relevantly amended by S.I. 2008/753.

(c) S.I. 2004/2065. Relevant amending instruments are S.I. 2007/1640, 2008/753, 2014/471 and 2016/976.

- (b) for the definition of “motor fuels record” substitute—
  - ““motor and heating fuels record” has the meaning given in regulation 13;”.
- (3) In regulation 13 (motor fuels record), in the heading and paragraphs (1) and (3), after “motor”, in each place it occurs, insert “and heating”.
- (4) In the Schedule (particulars to be entered in the motor fuels record)—
  - (a) in the heading after “Motor” insert “and Heating”;
  - (b) in paragraph 1 (charge arising on setting aside)—
    - (i) in the words before sub-paragraph (a), after “motor” insert “and heating”;
    - (ii) in sub-paragraph (bb), for “other than as fuel for a road vehicle” substitute “as fuel for an excepted machine”;
    - (iii) after sub-paragraph (c)(vi) insert—
      - “(via) suitable only for use in a light oil heating system;
      - (vib) suitable only for use in a kerosene heating system;
      - (vic) suitable only for use in a non-kerosene heating system;”;
    - (iv) after sub-paragraph (c)(xa) insert—
      - “(xb) suitable only as an additive or extender in fuel for use in a light oil heating system;
      - (xc) suitable only as an additive or extender in fuel for use in a kerosene heating system;
      - (xd) suitable only as an additive or extender in fuel for use in a non-kerosene heating system;”;
    - (v) in sub-paragraph (h) after “motor” insert “and heating”;
  - (c) in paragraph 2 (charge arising on chargeable use)—
    - (i) in the words before sub-paragraph (a), after “motor” insert “and heating”;
    - (ii) in sub-paragraph (c)(vi) for “(iv)” substitute “(v)”;
    - (iii) after sub-paragraph (c)(vi) insert—
      - “(via) fuel for use in a light oil heating system;
      - (vib) fuel for use in a kerosene heating system;
      - (vic) fuel for use in a non-kerosene heating system;”;
    - (iv) after sub-paragraph (c)(xa) insert—
      - “(xb) an additive or extender in fuel for use in a light oil heating system;
      - (xc) an additive or extender in fuel for use in a kerosene heating system;
      - (xd) an additive or extender in fuel for use in a non-kerosene heating system;”;
    - (v) in sub-paragraph (e) after “motor” insert “and heating”.

**Amendment of the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005**

**8.—(1)** The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005(a) are amended as follows.

- (2) In regulation 2 (interpretation)—
  - (a) for the definition of “qualifying bioblend” substitute—

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(a) S.I. 2005/3320. Relevant amending instruments are S.I. 2007/2191, 2008/753, 2013/657, 2014/713.

““qualifying bioblend” means bioblend charged with a duty of excise under section 6AB(a) of the Hydrocarbon Oil Duties Act 1979 on whose delivery for home use no rebate has been allowed under section 14B(b) of that Act;”;

(b) for the definition of “qualifying oil” substitute—

““qualifying oil” means—

(a) heavy oil charged with a duty of excise under section 6(1) of the Hydrocarbon Oil Duties Act 1979 on whose delivery for home use no rebate has been allowed under section 11(1), 13ZA(c) or 13AA(d) of that Act or in respect of which a payment under section 12(2)(e) of that Act has been made; and

(b) light oil on whose delivery for home use rebate has been allowed under section 14(1)(f) of that Act;”;

(c) in the definition of “relevant duty”—

(i) in paragraph (a) omit “11(1), 13ZA, 13AA or”;

(ii) in paragraph (b) omit from “less” to the end.

(3) For Schedule 2 (carbon price support rates)(g) substitute—

## “SCHEDULE 2

Regulations 6 and 10(4)

### Carbon Price Support Rates

<i>Fuel</i>	<i>Rate</i>
Qualifying oil which is light oil (light oil for use as furnace fuel)	£0.05711 per litre
Qualifying oil which is heavy oil other than gas oil or kerosene (on which no rebate has been allowed under section 11(1) or 13ZA of HODA or in respect of which a payment under section 12(2) of HODA has been made)	£0.05711 per litre
Qualifying oil which is gas oil or kerosene (on which no rebate has been allowed under section 11(1)(b) or 13AA of HODA)	£0.04916 per litre
Qualifying bioblend	£0.04916 per litre”

## PART 3

### Transitional provisions

#### Vehicles other than road vehicles - forfeiture

9.—(1) Where—

(a) heavy oil was taken as fuel into a vehicle at a time when it was not a road vehicle for the purposes of the Act, as it had effect before 1st April 2022;

(a) Section 6AB was inserted by section 5 of FA 2002 and amended by paragraph 7 of Schedule 2 to FA 2002, paragraph 5 of Schedule 5 to FA 2008, section 12 of FA 2010 (c. 13), paragraph 2 of Schedule 11 to FA 2020 (c. 14) and paragraph 3 of Schedule 21 to FA 2021.

(b) Section 14B was inserted by paragraph 13 of Schedule 5 to FA 2008 and amended by paragraph 6 of Schedule 11 to FA 2020 and paragraph 11 of Schedule 21 to FA 2021.

(c) Section 13ZA was inserted by paragraph 28 of Schedule 6 to FA 2008.

(d) Section 13AA was inserted by section 5 of FA 1996 (c. 8) and amended by section 7 of FA 1997, section 10 of FA 2004, section 4 of FA 2005 (c. 7), section 13 of, and paragraph 10 of Schedule 5 to, FA 2008 and paragraph 8 of Schedule 21 to FA 2021.

(e) Section 12(2) was amended by section 5 of FA 1996, paragraph 7 of Schedule 3 to FA 2002, paragraph 26 of Schedule 6 to FA 2008 and paragraph 2 of Schedule 11 to FA 2022.

(f) Section 14(1) was amended by section 179 of FA 2013.

(g) Schedule 2 was substituted by S.I. 2014/713.

- (b) the oil remains in the vehicle as part of its fuel supply on or after 1st April 2022;
  - (c) the vehicle is not, or ceases to be, an excepted machine; and
  - (d) regulation 10(2) does not apply to the oil,
- the heavy oil is liable to forfeiture<sup>(a)</sup>.

(2) In this regulation—

- (a) “heavy oil” has the meaning given in section 1(4) of the Act (hydrocarbon oil);
- (b) “excepted machine” has the meaning given in section 27(1) of the Act (interpretation)<sup>(b)</sup>.

### **Use of heavy oil or marked oil**

**10.**—(1) The following provisions of the Act do not apply in relation to heavy oil or marked oil to which paragraph (2) or (4) applies—

- (a) section 12(2) (restriction on use of heavy oil as fuel for certain purposes);
- (b) section 13(6) (liability to forfeiture of certain heavy oil)<sup>(c)</sup>;
- (c) section 24A (penalties for misuse of marked oil)<sup>(d)</sup>.

(2) This paragraph applies to heavy oil or marked oil that—

- (a) was taken into a vehicle, vessel, machine or appliance in the United Kingdom before 1st April 2022 in accordance with the law of the place in the United Kingdom where it was taken in;
- (b) was not used at any time before 1st April 2022 other than—
  - (i) as fuel for that vehicle, vessel, machine or appliance; and
  - (ii) in a way that was in accordance with the law of the place where it was used; and
- (c) is not used on or after 1st April 2022 other than—
  - (i) as fuel for that vehicle, vessel, machine or appliance; and
  - (ii) in a way that would be in accordance with the law of the place where it is used if the relevant provisions had not come into force.

(3) The relevant provisions are any provisions of—

- (a) Schedule 21 to the Finance Act 2021<sup>(e)</sup>;
- (b) Part 1 of Schedule 11 to the Finance Act 2022<sup>(f)</sup>.

(4) This paragraph applies to heavy oil or marked oil that is held by a person who obtained it before 11th June 2021 for use in stand-by power generation or for use as fuel for critical equipment (including when it is used by that person for that purpose).

(5) For the purposes of paragraph (4)—

- (a) stand-by power generation is any method of powering equipment in the event that the main power supply for that equipment ceases to be available;
- (b) equipment is critical if it is needed to ensure continuous use or availability of an essential or critical service including (amongst other things)—
  - (i) protecting national security;
  - (ii) emergency services and law enforcement;
  - (iii) health services;
  - (iv) the supply of water, fuel and power;

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<sup>(a)</sup> See section 139 of the Customs and Excise Management Act 1979 (c. 2).

<sup>(b)</sup> The definition of “excepted machine” was inserted by paragraph 20 of Schedule 21 to FA 2021 (c. 26).

<sup>(c)</sup> Section 13(6) was amended by paragraph 6 of Schedule 21 to FA 2021 and paragraph 3 of Schedule 11 to FA 2022.

<sup>(d)</sup> Section 24A was inserted by section 7 of FA 1996 and amended by paragraph 21 of Schedule 5 to FA 2008, paragraph 19 of Schedule 21 to FA 2021, paragraph 7 of Schedule 11 to FA 2022 and S.I. 2015/664.

<sup>(e)</sup> Schedule 21 was amended by paragraph 10 of Schedule 11 to FA 2022.

<sup>(f)</sup> 2022 c. 3.



- (v) protecting the welfare of livestock and other animals.
- (6) In this regulation—
  - (a) “heavy oil” has the meaning given in section 1(4) of the Act (hydrocarbon oil);
  - (b) “marked oil” has the meaning given in section 24A(2) of the Act (penalties for misuse of marked oil).

### **Reliefs for Electricity Generation**

**11.**—(1) For the purposes of the Hydrocarbon Oil Duties (Relief for Electricity Generation) Regulations 2005 (“the reliefs regulations”)—

- (a) heavy oil to which paragraph (2) applies is to be treated as if it were qualifying oil; and
- (b) bioblend to which paragraph (3) applies is to be treated as if it were qualifying bioblend.

(2) This paragraph applies to heavy oil charged with a duty of excise under section 6(1) of the Act on whose delivery for home use a rebate has been allowed under section 11(1), 13ZA or 13AA of the Act that—

- (a) was obtained before 11th June 2021 by the person who used it; or
- (b) was—
  - (i) obtained on or after 11th June 2021 by the person who used it; and
  - (ii) before 1st April 2022, taken into a machine for one of the purposes specified in regulation 3(1) of the reliefs regulations.

(3) This paragraph applies to bioblend charged with a duty of excise under section 6AB of the Act on whose delivery for home use a rebate has been allowed under section 14B of the Act that—

- (a) was obtained before 11th June 2021 by the person who used it; or
- (b) was—
  - (i) obtained on or after 11th June 2021 by the person who used it; and
  - (ii) before 1st April 2022, taken into a machine for one of the purposes specified in regulation 3(1) of the reliefs regulations.

(4) Where paragraph (2) or (3) applies, the reliefs regulations apply as if Schedule 2 were not substituted by regulation 8(3) of these Regulations.

7th March 2022 *Rebecca Harris*  
*Michael Tomlinson*  
Two of the Lords Commissioners of Her Majesty’s Treasury

7th March 2022 *Jim Harra*  
*Myrtle Lloyd*  
Two of the Commissioners for Her Majesty’s Revenue and Customs

### **EXPLANATORY NOTE**

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

These Regulations make provision relating to restriction on the use of rebated diesel and biofuels to specified categories of machines introduced by the Finance Act 2021 (c. 26) and the Finance Act 2022 (c. 3).

Part 1 provides for citation, commencement and interpretation.

Part 2 makes amendments to a number of statutory instruments consequential on the new restrictions on the use of rebated diesel and biofuels.

Regulation 2 amends the Hydrocarbon Oil Regulations 1973 (S.I. 1973/1311) to extend existing powers relating to the inspection, testing and sampling of oil, bioblend or bioethanol blend in or forming part of the fuel supply of any vehicle, vessel, machine or appliance.

Regulation 3 amends the Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995 (S.I. 1995/2716) to extend provisions relating to determination of the appropriate rate of duty for fuel substitutes, additive and extenders to heating systems and to clarify that the rate of duty for a fuel substitute to be used in a diesel engine, or an engine, other than a piston engine, of an aircraft, is that specified by section 6 of the Hydrocarbon Oil Duties Act 1979 (c. 5) (“HODA”) for heavy oil minus the rate of rebate allowable under section 11.

Regulation 4 amends the Hydrocarbon Oil (Designated Markers) Regulations 1996 (S.I. 1996/1251) to provide for the designation of markers for the purposes of identifying fuel that is not to be used other than for an excepted machine (as defined by section 27 of HODA).

Regulation 5 amends the Hydrocarbon Oil (Payment of Rebates) Regulations 1996 (S.I. 1996/2313) to make provision for payments to HMRC, of amounts equal to any rebate, to be made for the purposes of section 12(2) of HODA in relation to a vehicle, vessel, machine or appliance that is not an excepted machine. This regulation makes further provision under sections 45 and 48 of the Taxation (Cross-border Trade) Act 2018 (c. 22) amending those regulations to provide for forms required for the purposes of repayment of rebates to be specified in a notice published by HMRC Commissioners.

Regulation 6 amends the Hydrocarbon Oil (Marking) Regulations 2002 (S.I. 2002/1773) to extend provision relating to labelling of delivery points for marked oil and particulars to be recorded on delivery notes to fuel not to be used other than for an excepted machine. Regulation 15 of the Hydrocarbon Oil (Marking) Regulations 2002 was made using section 2(2) of the European Communities Act 1972 (c. 68) and the amendment to that regulation is made using powers in section 45 of the Taxation (Cross-border Trade) Act 2018.

Regulation 7 amends the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004 (S.I. 2004/2065) to extend provisions relating to record keeping to fuel substitutes used in heating systems.

Regulation 8 amends the Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (S.I. 2005/3320) to align the availability of relief with the changes to the availability of a rebate.

Part 3 makes transitional provision in connection with the coming into force of the restrictions.

Regulation 9 makes transitional provision in relation to forfeiture relating to changes of use to reflect the change in the legislation from excepted vehicles to excepted machines.

Regulation 10 makes transitional provision in relation to the continued use of rebated heavy oil or other marked oil that was taken into a vehicle, vessel, machine or appliance in the United Kingdom before 1st April 2022 where the taking in and use of the fuel was lawful prior to that date. Further provision is made in relation to use of rebated heavy oil or marked oil that is held by a person who obtained it before 11th June 2021 for use in stand-by power generation for critical equipment.

Regulation 11 makes transitional provision to secure the continued availability of relief in relation to fuel used for electricity generation where the fuel was obtained before 11th June 2021 by the person who used it or was obtained on or after that date and taken into a machine for use for electricity generation before 1st April 2022.

Any public notices referred to in these Regulations will be published at: <https://www.gov.uk/government/collections/oils-notice>. A person unable to access the notices electronically may access them in hard copy by post free of charge on application and otherwise by inspection free of charge at HMRC, 100 Parliament Street, London SW1A 2BQ (telephone: fuel duty enquiry line 0300 200 3700 or email: see <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/excise-enquiries>).

A Tax Information and Impact Note covering this instrument was published alongside Finance Bill 2021-22 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins> under the heading Autumn Budget 2021. It remains an accurate summary of the impacts that apply in relation to this instrument.

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