

2022 No. 0000

EXCISE

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

<i>Made</i>	- - - -	2022
<i>Laid before the House of Commons</i>		2022
<i>Coming into force</i>	- -	2022

The Treasury, in exercise of the powers conferred by section 102(3) and (4) of the Finance Act 2021^(a) and section [75(3) and (4)] of the Finance Act 2022^(b), 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^(c), 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^(d);

PART 2

Consequential amendments

Amendment of the Hydrocarbon Oil Regulations 1973

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

(2) In regulation 1—

- (a) the text to the definition of “standard litre” becomes paragraph (1);
- (b) omit the definition of “vessel”;

(a) 2021 c. 26.

(b) 2022 c. xl.

(c) 2018 c. 22.

(d) 1979 c. 5 (“HODA”).

(e) S.I. 1973/1311; relevant amending instruments are S.I. 2008/753 and 2021/780.

(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, as it has effect in relation to private pleasure craft in Northern Ireland^(a), for paragraph (6) substitute—

“(6) In this regulation “relevant machine” means a vehicle, vessel, machine or appliance.”

(4) In regulation 47, as it has effect otherwise than in relation to private pleasure craft in Northern Ireland, after paragraph (5) insert—

“(6) In this regulation “relevant machine” means a vehicle, vessel, machine or appliance.”

(5) In regulation 47 (as it has effect in relation to private pleasure craft in Northern Ireland and otherwise)—

(a) for “any vehicle”, in each place it occurs, substitute “any relevant machine”;

(b) for “a vehicle” substitute “relevant machine”;

(c) for “the vehicle”, in each place it occurs, substitute “the machine”.

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—

“(g) “kerosene heating system” means a heating system powered by an engine 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 powered by an engine 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 “(aa)”.

(4) In article 4 (rates of duty for fuel substitutes)—

(a) in paragraph (2) 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 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)—

(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. Relevant amending instruments are S.I. 2002/3042, 2004/2062, 2008/754 and 2014/470.

- (i) after “engine”, in the first place it occurs, insert “or heating system”;
 - (ii) after “(a)” insert “, (aa), (ab)”.
- (5) In article 5 (rates 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(a) are amended as follows.

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

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

5.—(1) The Hydrocarbon Oil (Payment of Rebates) Regulations 1996(b) 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(c)”;
 - (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)—
 - (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”;

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

(b) S.I. 1996/2313.

(c) “Excepted machine” is defined in section 27(1) of HODA.

- (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 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 Commissioner”;
 - (bb) for “following” substitute “relevant”;
 - (cc) omit the words in brackets after “the occurring event”;
- (d) after paragraph (6) 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).”.
- (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”;

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

(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(a) 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 paragraph (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(b) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) at the appropriate places insert—

““kerosene heating system” means a heating system powered by an engine which is designed or adapted to use kerosene as fuel;”;

““light oil heating system” means a heating system powered by an engine which is designed or adapted to use light oil as fuel;”;

““non-kerosene heating system” means a heating system powered by an engine which is designed or adapted to use heavy oil other than kerosene as fuel;”;

(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 and heating 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;

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

(b) S.I. 2004/2065. Relevant amending instruments are S.I. 2007/1640, 2008/753, 2014/4712016/976,

- (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) 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 (c) 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—
 - ““qualifying bioblend” means bioblend charged with a duty of excise under section 6AB of the Hydrocarbon Oil Duties Act 1979 on whose delivery for home use no rebate has been allowed under section 14B 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 or 13AA of that Act or in respect of which a payment under section 12(2) of that Act has been made; and
 - (b) light oil on whose delivery for home use rebate has been allowed under section 14(1) of that Act;”;
 - (c) in the definition of “relevant duty”—
 - (i) in paragraph (a) omit “11(1), 13ZA, 13AA or”;

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

- (ii) in paragraph (b) omit from “less” to the end.
- (3) For Schedule 2 (carbon price support rates)(a) substitute the following Schedule—

“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;
 - (b) the oil remains in the vehicle as part of its fuel supply after 1st April 2022; and
 - (c) the vehicle is not, or ceases to be, an excepted machine,
- the heavy oil is liable to forfeiture.
- (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).

Use of heavy oil or other marked oil

- 10.**—(1) The following provisions of the Act do not apply in relation to heavy oil or other 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);
 - (c) section 24A (penalties for misuse of marked oil).
- (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

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

- (ii) in a way that was in accordance with the law of the place where it is 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;
 - (b) Part 1 of Schedule [10] to the Finance Act 2022(a).
- (4) This paragraph applies to heavy oil or marked oil that is held by a person who obtained it before 10th June 2021 for use in stand-by power generation 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 critical 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) public health;
 - (iv) the supply of water, fuel and power;
 - (v) the welfare of livestock and other animals.

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 10th June 2021 by the person who used it; or
- (b) was—
 - (i) obtained on or after 10th 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 10th June 2021 by the person who used it; or
- (b) was—
 - (i) obtained on or after 10th 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.

(a) 2022 c. x.

Name
Name

Date Two of the Lords Commissioners of Her Majesty's Treasury

Name
Name

Date 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. xx).

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 to any vehicle, vessel, machine or appliance.

Regulation 3 amends the Other Fuel Substitutes (Rates of Excise Duty etc) Order 1995 (S.I. 1995/2816) to extend provisions relating to determination of the appropriate rate of duty for fuel substitutes, additive and extenders to heating systems.

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 the Hydrocarbon Oil Duties Act 1979 (c. 5) ("HODA").

Regulation 5 amends the Hydrocarbon Oil (Payment of Rebates) Regulations 1996 (S.I. 1996/2313) to make provision for repayments of rebates to be made for the purposes of section 12(2) of HODA in relation to an excepted machine. This regulation makes further provision under section 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 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 10th 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 10th June 2021 by the person who used it or was obtained on or after that date and taken into a machine for use of electricity generation before the 1st April 2022.

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

DRAFT