



BIOFUELS AND OTHER FUEL SUBSTITUTES (PAYMENT OF EXCISE DUTIES ETC.) REGULATIONS 2004

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Statutory Document No. 2004/0651



Customs and Excise Acts 1986

BIOFUELS AND OTHER FUEL SUBSTITUTES (PAYMENT OF EXCISE DUTIES ETC.) REGULATIONS 2004¹

Laid before Tynwald: 19 October 2004

Coming into Operation: 1 September 2004

In exercise of the powers conferred on the Treasury by sections 94(1)(a), (b), (c), (2)(a) and (c), 107A(1), 107B(1)(b) and (2), 124A(1) and (2), 134(1) and (2) and 143A of the Customs and Excise Management Act 1986¹, sections 6AC(1)(a) and (b), (2) and (4), 6AF(1)(a) and (b), (2) and (4), 23A(1)(a) and (2)(a) to (d), (g), (h) and (i), 24(1)(a) and (2) and 27(1) of and paragraph 3 of Schedule 2 and paragraphs 3, 17 and 23 of Schedule 3 to, the Hydrocarbon Oil Duties Act 1986², and of all other powers enabling it in that behalf, the following Regulations are hereby made:-

PART 1

PRELIMINARY

1 Citation and commencement

- (1) These Regulations may be cited as the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004 and come into operation on 1st September 2004.
- (2) Part 7 (relief for electricity generation) has effect in relation to any biofuel that is used as motor fuel in a generator to produce electricity on or after 1st September 2004.

2 Interpretation

In these Regulations —

“**the Act**” means the Hydrocarbon Oil Duties Act 1986;

¹ 1986 c.34

² 1986 c.38

“**approved person**” means a person approved by the Treasury under regulation 4 of the Deferment Regulations;

“**authorised person**” means a person authorised by the Treasury;

“**biodiesel duty**” means the duty charged on biodiesel by section 6AA(1) of the Act;

“**bioethanol duty**” means the duty charged on bioethanol by section 6AD(1) of the Act;

“**biofuel**” means biodiesel, bioethanol or fuel substitute;

“**biofuels duty**” means bioethanol duty, biodiesel duty or fuel substitute duty;

“**chargeable use**” —

- (a) in relation to biodiesel, means chargeable use within the meaning of section 6AA(2) of the Act,
- (b) in relation to bioethanol, means chargeable use within the meaning of section 6AD(2) of the Act, and
- (c) in relation to fuel substitute, means chargeable use within the meaning of section 6A(2) of the Act;

“**the Deferment Regulations**” means the Excise Duties (Deferred Payment) Regulations 1993³;

“**duty**” means any duty of excise;

“**entered premises**” means premises that have been entered in accordance with regulation 8;

“**fuel substitute**” means a liquid that is charged with fuel substitute duty;

“**fuel substitute duty**” means the duty charged by section 6A of the Act;

“**motor fuels record**” has the meaning given in regulation 13;

“**producer**” means a person who —

- (a) sets aside biofuel for a chargeable use, or
 - (b) makes a chargeable use of biofuel,
- with the consequence that biofuels duty is charged;

“**production premises**” means any premises in relation to which a person is a producer, and which, if not entered by him, are required by regulation 8 to be entered;

“**used as motor fuel**” means used —

- (a) as fuel for: any engine, motor or other machinery, or
- (b) as an additive or extender in any substance so used.

³ S.D. No. 94/93

PART 2

EFFECT ON OTHER ENACTMENTS

3 Construction of references to hydrocarbon oil etc. in the Hydrocarbon Oil Duties Act 1986

- (1) The references to hydrocarbon oil in the following provisions of the Act are to be construed as including references to biodiesel and bioethanol —
 - (a) section 16(1) (drawback of duty on exportation etc.);
 - (b) section 20(3) (fuel used in lifeboats etc.);
 - (c) section 23A(1)(a) (power to allow reliefs);
 - (d) section 24(2) (regulations with respect to hydrocarbon oil);
 - (e) paragraph 3 of Schedule 2 (subjects for regulations);
 - (f) paragraphs 17 and 23 of Schedule 3 (subjects for regulations).
- (2) The references to hydrocarbon oil in the following provisions of the Act are to be construed as including references to bioblend and bioethanol blend —
 - (a) section 3 (hydrocarbon oil as an ingredient in imported goods);
 - (b) section 16(1) (drawback of duty on exportation etc.);
 - (c) section 20(3) (fuel used in lifeboats etc.);
 - (d) section 22(1)(a) and (3)(a) (contaminated oil).
- (3) The reference to the duty on hydrocarbon oil in section 16(1) of the Act is to be construed as including reference to —
 - (a) biodiesel duty,
 - (b) the duty under section 6AB (bioblend) of the Act,
 - (c) bioethanol duty, and
 - (d) the duty under section 6AE (bioethanol blend) of the Act.
- (4) The references to the duty on hydrocarbon oil in section 23A(1)(a) of the Act are to be construed as including references to biodiesel duty and bioethanol duty.

4 Revocations

- (1) The Other Fuel Substitutes (Payment of Excise Duty etc.) Regulations 1995⁴ are revoked.
- (2) The Biodiesel and Bioblend Regulations 2002⁵ are revoked.

⁴ S.D. No. 616/95

⁵ S.D. No. 525/02

5 Amendment of the Deferment Regulations

- (1) Amend the Deferment Regulations as follows.
- (2) In regulation 2 —
 - (a) after the definition of “approved person” insert —

☐ “biofuels” means a liquid that is charged with excise duty under section 6AA(2) (biodiesel), 6AD(2) (bioethanol) or 6A(2) (other liquid fuel substitutes) of the Hydrocarbon Oil Duties Act 1986;☐, and
 - (b) following the definition of “business day”, insert —

☐ “hydrocarbon oils” means goods (except biofuels and load fuel gas) chargeable with excise duty by virtue of the Hydrocarbon Oil Duties Act 1986 and includes composite goods containing hydrocarbon oils on which goods excise duty is chargeable;☐.
- (3) In regulation 3(a), after “spirits,” insert ☐ biofuels,☐.
- (4) In regulation 5(3), after sub-paragraph (b) insert —

☐ (ba) in the case of biofuels on which the duty would, but for deferment granted by these Regulations, be payable on or after the 15th day of one month and not later than the 14th day of the next month, the last business day of that next month;☐.
- (5) In regulation 11 (purposes for which duty is treated as paid), immediately after paragraph (d) insert —

☐;

 - (e) regulation 21 of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc.) Regulations 2004.☐.

PART 3

WAREHOUSING

6 Production in warehouse

Part 4 (production premises) does not apply where —

- (a) the premises are an excise warehouse approved by the Treasury under section 93 of the Customs and Excise Management Act 1986, for the production and holding of the biofuel in question, and
- (b) the producer is an authorized warehousekeeper (within the meaning of that term in regulation 3 of the Warehousekeepers and

Owners of Warehoused Goods Regulations 1999⁶ authorised by the terms of his approval to hold biofuels of that class or description.

7 Warehousing

- (1) Only biofuel that is —
 - (a) special energy product, or
 - (b) bioethanol for the production of bioethanol blend, may be produced in an excise warehouse or warehoused.
- (2) subject to, and in accordance with, warehousing regulations —
 - (a) biofuel that is special energy product may be warehoused for any purpose,
 - (b) bioethanol may be warehoused only for the purpose of blending with hydrocarbon oil to produce bioethanol blend.
- (3) In this regulation, “special energy product” has the same meaning as in regulation 2 of the Excise warehousing (Energy products) Regulations 2004⁷.

PART 4

PRODUCTION PREMISES

8 Requirement to make entry of production premises

- (1) Subject to paragraph (2), every producer of biofuel must —
 - (a) before he sends out from any premises a consignment of biofuel that is charged with biofuels duty because it is set aside for chargeable use when on those premises, or
 - (b) within the period of 30 days beginning with the day that he makes a chargeable use of biofuel at any premises with the consequence that biofuels duty is charged,enter those premises in accordance with section 108.
- (2) Paragraph (1) does not apply if the producer has already entered the premises in accordance with section 113 for the purposes of —
 - (a) paragraph (1);
 - (b) the other Fuel Substitutes (Payment of Excise Duty etc.) Regulations 1995; or
 - (c) the Biodiesel and Bioblend Regulations 2002, and,

⁶ S.D. No. 347/99

⁷ S.D. No.650/04

there has been no change in the particulars given in respect of that previous entry.

- (3) In this regulation, “section 113” means section 113 of the Customs and Excise Management Act 1986.

9 Storage of biofuels on production premises

Biofuels of different descriptions must be stored separately while on production premises, but this does not prevent biofuels from being mixed together to produce another biofuel.

10 Rights of access

- (1) An authorised person may enter and inspect any production premises, other than a private dwelling house.
- (2) An authorised person may examine any vehicle on those premises.
- (3) An authorised person may inspect or sample any biofuel found on those premises.
- (4) An authorised person may inspect or sample any biofuel found on or in any vehicle on those premises.

11 Provision of facilities by producers etc.

Any person occupying or for the time being in charge of any premises which an authorised person enters and inspects under regulation 10 must, if required by the authorised person, give facilities for the inspection or sampling of any biofuel found —

- (a) on those premises, or
- (b) in or on any vehicle on those premises

12 Removal of biofuel from production premises for warehousing

Subject to regulation 7 (warehousing), biofuel that is charged with biofuels duty while on entered premises may be removed from those premises for warehousing in an excise warehouse adjacent to the entered premises without payment of the biofuels duty.

PART 5

RECORDS AND MEASUREMENT

13 Motor fuels record

- (1) Every producer must keep and preserve at production premises a record (“the motor fuels record”) in accordance with the provisions of, and containing the particulars specified in, the Schedule.
- (2) In the Schedule, a reference to “standard litres” means a litre of any liquid at a temperature of 15°C.
- (3) The motor fuels record must be preserved by the producer for a period of 6 years, or such lesser period as the Treasury may allow, starting on the day that the record is made.

14 Fuel substitutes record and biodiesel record

- (1) This regulation applies if, before 1st September 2004, a person was obliged to keep and preserve —
 - (a) the fuel substitutes record governed by regulation 6 of the Other Fuel Substitutes (Payment of Excise Duty etc.) Regulations 1995, or
 - (b) the biodiesel record governed by regulation 7 of the Biodiesel and Bioblend Regulations 2002.
- (2) Notwithstanding the revocation of the regulations described in paragraph (1), the person must continue to preserve the fuel substitutes record or the biodiesel record, as the case may be, for a period of 6 years, or such lesser period as the Treasury may allow, starting on the day that the record is made.

15 Delivery note

- (1) This regulation applies if —
 - (a) a producer sends out from production premises a consignment of biofuel, and
 - (b) that biofuel is charged with biofuel duty because it is set aside for chargeable use when on those production premises.
- (2) The producer must, in respect of each consignment sent out from production premises, issue to the consignee a serially numbered delivery note containing the particulars specified in paragraph (3).
- (3) The particulars that are to be set out in the delivery note are as follows —
 - (a) the particulars set out in sub-paragraphs (a) to (f) of paragraph 1 of the Schedule; and
 - (b) the address from which that consignment is sent out.

16 Measurement

Where an authorised person requires the use of —

- (a) a particular method of measurement,
- (b) a particular method of calibration, or
- (c) particular conversion tables,

to ascertain any quantity of biofuel at or received into, used at or sent out from a production premises, or an excise warehouse, the occupier of the production premises or the excise warehouse must comply with such requirement.

PART 6

EXCISE DUTY POINTS, RETURNS AND PAYMENT

17 Excise duty points

(1) Save —

- (a) in the case specified in paragraph (2), or
- (b) where duty suspension arrangements apply to the biofuel,

the excise duty point for biofuel is the time when it is charged with biofuels duty.

(2) The excise duty point for biofuel that is sent out from entered premises having been charged with biofuels duty when on those premises is the time that the biofuel is sent out.

(3) Where biofuel is removed from entered premises in accordance with regulation 12, but it is not deposited in an adjacent excise warehouse within a reasonable time, the excise duty point for the biofuel is the time that it was sent out from the entered premises.

(4) In this regulation, “duty suspension arrangements” means any provision made by or under the customs and excise Acts (including provision made by these Regulations) for enabling goods to be held or moved without payment of duty or any provision made by or under those Acts in connection with any provision enabling goods to be so held or moved.

18 Person liable

The person liable to pay the biofuels duty at an excise duty point fixed by regulation 17 is —

- (a) in the case of biofuel that is charged to biofuels duty on production premises, the producer;
- (b) in any other case, the person who caused the biofuel to be charged with biofuels duty

19 Returns, time and method of payment

- (1) Subject to paragraphs (a) and (6), a producer must, in relation to each of his entered premises, no later than the fifteenth day of each month —
 - (a) furnish a return of the quantities of biodiesel, bioethanol and fuel substitute, and
 - (b) pay the biofuels duty,in respect of which there was an excise duty point in the preceding month.
- (2) The return must be made on forms provided by the Treasury for the purpose.
- (3) The return must be furnished, and the payment made, to the Treasury at such address as is specified in directions made by the Treasury under section 121(1) of the Customs and Excise Management Act 1986.
- (4) Where the fifteenth day of the month would fall on a day that is not a business day, the requirements of paragraph (1) must be complied with no later than the last business day before that fifteenth day.
- (5) In paragraph (4), “business day” means a day that is a business day within the meaning of section 92 of the Bills of Exchange Act 1883⁸.
- (6) If the producer is an approved person who is granted deferment of the biofuels duty in accordance with regulation 5 of the Deferment Regulations, then —
 - (a) no information need be furnished to the Treasury in accordance with paragraph (1) in relation to biofuel that is subject to that deferment, and
 - (b) the time when the biofuels duty is to be paid shall be the payment day specified by the Deferment Regulations.
- (7) In any other case for which an excise duty point is fixed by these Regulations, the biofuels duty must be paid on or before the excise duty point.

PART 7

RELIEF FOR ELECTRICITY GENERATION

20 Interpretation of this Part

In this Part, “qualified claimant” means a person who causes biofuel to be used as motor fuel in a generator to produce electricity.

⁸ Vol V, p.310

21 Relief

- (1) Relief is afforded in accordance with this Part if a quantity of biofuel has been —
 - (a) charged with biofuels duty, and
 - (b) used as motor fuel in a generator to produce electricity.
- (2) The amount that is afforded is the amount of the biofuels duty that has been charged and paid.
- (3) Relief is allowed only upon the written application of a qualified claimant.
- (4) No relief is allowed in respect of any biofuels duty that is the subject of any other application or claim for repayment, remission or drawback.

22 Form of relief

- (1) If, at the time that the claim is made, the qualified claimant is an approved person, relief shall be in the form of an allowance to be set-off against duty payable to the Treasury by the qualified claimant.
- (2) If, at the time that the claim is made, the qualified claimant —
 - (a) is not an approved person,
 - (b) is a producer in relation to the biofuel that is the subject of the claim for relief, and
 - (c) has entered the premises (in accordance with regulation 8) on which that biofuel was charged with biofuels duty,relief shall be in the form of an allowance to be set-off against the biofuels duty payable to the Treasury by the qualified claimant in respect of the biofuel that is the subject of the claim for relief.
- (3) In any other case, the relief shall be in the form of a repayment by the Treasury to the qualified claimant.
- (4) If two or more qualified claimants make application for relief relating to the same fuel, the Treasury may determine which one shall be afforded the relief.
- (5) If in relation to any application for relief it appears to the Treasury that the relief applied for exceeds the amount allowable under regulation 21, it may, in such circumstances as it sees fit and notwithstanding the provisions of regulations 25(1) and 26(3), reduce the amount of the claim to such lesser sum as appears to it to be allowable.

23 Set-off

- (1) In the case described by regulation 22(1) (approved persons), the qualified claimant must set-off the relief in accordance with regulation 6 of the Deferment Regulations.

- (2) In the case described by regulation 22(2) (producers), the qualified claimant must set-off the relief against the biofuels duty that he is obliged to pay under regulation 19(1).
- (3) In any other case, the Treasury may set-off the amount of any repayment under regulation 22(3) against any other debt then due to it from the qualified claimant.

24 Applications

- (1) Applications for relief that is set-off in accordance with regulation 23(1) must be made by submitting the claim for set-off governed by regulation 6(2) of the Deferment Regulations.
- (2) Applications for relief that is set-off in accordance with regulation 23(2) must accompany the return governed by regulation 19(1) that he is obliged to furnish in respect of the biofuels duty.
- (3) Applications for repayment —
 - (a) must be made no later than 3 months after the period to which they relate, and that period must not be shorter than 2 months nor longer than 3 years, and
 - (b) shall not lie where the amount to be paid is less than £50.

25 Cancellation of relief

- (1) If there is a contravention of, or failure to comply with, any condition imposed by or under regulation 26 or 27, the relief allowed shall be cancelled.
- (2) Where any relief is cancelled, any person who is a qualified claimant in relation to the application for relief shall, on demand, be liable to repay the amount of the relief.

26 General conditions

- (1) Relief is allowed subject to the following conditions.
- (2) The qualified claimant must, on being so required by the Treasury, furnish to its satisfaction evidence that —
 - (a) the biofuel that is the subject of the application for relief has been used as motor fuel in a generator to produce electricity, and
 - (b) the biofuels duty that is the subject of the application for relief has been paid and is not the subject of any other application or claim for repayment, remission or drawback.
- (3) The amount of relief applied for must not exceed the amount of relief that may be allowed by regulation 21.

27 Conditions imposed by the Treasury

Relief is allowed subject to such conditions (if any) as the Treasury imposes on a qualified claimant.

PART 8**BIODIESEL USED OTHERWISE THAN AS ROAD FUEL****28 Applications for repayment under section 17 of the Hydrocarbon Oil Duties Act 1986**

Applications for repayment under section 17 of the Act (biodiesel used otherwise than as road fuel) –

- (a) must be made no later than 3 months after the period to which they relate, and that period must not be shorter than 2 months nor longer than 3 years, and
- (b) shall not lie where the amount to be paid is less than £50.

MADE 25 AUGUST 2004

SCHEDULE

PARTICULARS TO BE ENTERED IN THE MOTOR FUELS RECORD

Regulation 13(1)

1 Charge arising on setting aside

In respect of each consignment of biodiesel, bioethanol or fuel substitute that is charged with biofuels duty because it is set aside for chargeable use when on the premises from which it is sent out, the following particulars must be entered in the motor fuels record before the consignment is sent out from his premises —

- (a) the date on which the consignment is sent out;
- (b) a description of that consignment indicating whether it is biodiesel, bioethanol or fuel substitute;
- (c) in the case of a consignment of fuel substitute, a description indicating that the fuel substitute has been charged with fuel substitute duty upon being set aside as —
 - (i) suitable only as fuel for a diesel engine,
 - (ii) suitable only as fuel for an engine, other than a piston engine, of an aircraft,
 - (iii) suitable only as fuel for a petrol engine powered by leaded petrol,
 - (iv) suitable only as fuel for a petrol engine powered by unleaded petrol,
 - (v) specially produced as fuel for a piston engine of an aircraft,
 - (vi) fuel for an engine, motor or machinery, but not falling within sub-paragraphs (i) to (v),
 - (vii) suitable only as an additive or extender in fuel for a diesel engine,
 - (viii) suitable only as an additive or extender in fuel for an engine, other than a piston engine of an aircraft,
 - (ix) suitable only as an additive or extender in fuel for a petrol engine powered by leaded petrol,
 - (x) suitable only as an additive or extender in fuel for a petrol engine powered by unleaded petrol,
 - (xi) a multi-purpose additive or extender (designated, made and prepared as being for use as an additive or extender in any light oil),
 - (xii) an additive or extender not falling within sub-paragraphs (vii) to (xi)
- (d) the quantity, in standard litres, of that consignment;

- (e) the name and address of the consignee to whom that consignment is sent;
- (f) the address to which that consignment is consigned;
- (g) the number of the delivery note (see regulation 15) that accompanied that consignment;
- (h) the date upon which the entry in relation to the consignment is made in the motor fuels record; and
- (i) the amount and rate of biofuels duty charged in respect of that consignment.

2 Charge arising on chargeable use

In respect of each quantity of biodiesel, bioethanol or fuel substitute that is charged with biofuels duty because it is put to chargeable use when on his premises, the following particulars must be entered in the motor fuels record on the day of the chargeable use —

- (a) the date of chargeable use;
- (b) a description of the liquid indicating whether it is biodiesel, bioethanol or fuel substitute;
- (c) in the case of fuel substitute, a description indicating that the fuel substitute has been charged with fuel substitute duty upon chargeable use as —
 - (i) fuel for a diesel engine,
 - (ii) fuel for an engine, other than a piston engine, of an aircraft,
 - (iii) fuel for a petrol engine powered by leaded petrol,
 - (iv) fuel for a petrol engine powered by unleaded petrol,
 - (v) fuel for a piston engine of an aircraft,
 - (vi) fuel for any other engine, motor or machinery not falling within subparagraphs (i) to (iv),
 - (vii) an additive or extender in fuel for a diesel engine,
 - (viii) an additive or extender in fuel for an engine, other than a piston engine of an aircraft,
 - (ix) an additive or extender in fuel for a petrol engine powered by leaded petrol,
 - (x) an additive or extender in fuel for a petrol engine powered by unleaded petrol,
 - (xi) an additive or extender in fuel for a piston engine of an aircraft, or
 - (xii) an additive or extender in fuel for any engine, motor or machinery not falling within paragraphs (i) to (iv);
- (d) the quantity, in standard litres, of the biofuel put to chargeable use;

- (e) the date upon which the entry in relation to the consignment is made in the motor fuels record; and
- (f) the amount and rate of biofuels duty charged in respect of that chargeable use.

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.