

# EXPLANATORY STATEMENT

## **Issued by authority of the** **Minister for Revenue and Financial Services**

*Petroleum Excise (Prices) Act 1987*

*Petroleum Excise (Prices) Regulations 2018*

The *Petroleum Excise (Prices) Act 1987* (the Act) sets out the manner in which the price of crude petroleum oil and condensate is determined for the purposes of imposing excise under the *Excise Tariff Act 1921*. Broadly, it provides for the price to be the volume weighted average of the relevant realised price for the period (the VOLWARE price).

Section 14 of the Act provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The purpose of the *Petroleum Excise (Prices) Regulations 2018* (the Regulations) is to remake and improve the operation of the *Petroleum Excise (Prices) Regulations 1988* (the prior Regulations). Under the rules set out in section 50 of the *Legislation Act 2003*, the prior Regulations sunset on 1 April 2018.

The Regulations remake and improve the prior Regulations by simplifying language and restructuring provisions for ease of navigation. The key changes include the consolidation of defined terms in a single section for ease of reference and the reference to provisions as sections rather than regulations.

The changes do not affect the substantive meaning or operation of the provisions.

Further details of the Regulations are set out in [Attachment A](#).

The Act does not specify any conditions that were required to be satisfied before the power to make the regulations was exercised.

Public consultation was undertaken on the proposed amendments from 12 February 2018 to 23 February 2018. No submissions were received.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on 1 April 2018.

Prior to the making of the Regulations and in accordance with the Office of Best Practice Regulation's Guidance Note on sunseting instruments, the Department of the Treasury self-assessed that the *Petroleum Excise (Prices) Regulations 1988* were operating effectively and efficiently, and therefore a Regulation Impact Statement was not required. This assessment was informed by the public consultation on the exposure draft Regulations.

A Statement of Compatibility with Human Rights is at [Attachment C](#). The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

## **Details of the Petroleum Excise (Prices) Regulations 2018**

This attachment sets out further details of the *Petroleum Excise (Prices) Regulations 2018* (the Regulations). All references are to the Regulations unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in the *Petroleum Excise (Prices) Regulations 1988* (the prior Regulations), as identified by the finding table in Attachment B.

Changes of a minor or machinery nature, such as the increased use of headings and also references to ‘section’ rather than ‘regulation’ in accordance with modern drafting practice, are generally not specifically identified in this Attachment. Where changes are made that are intended to apply in a different way or require further explanation, these are identified and explained in this Attachment.

### **Opening provisions**

#### Section 1 – Name of Regulations

This section provides that the title of the proposed Regulations is the *Petroleum Excise (Prices) Regulations 2018* (the Regulations).

#### Section 2 – Commencement

This section provides that the Regulations commence on 1 April 2018.

#### Section 3 – Authority

This section provides that the Regulations are made under the *Petroleum Excise (Prices) Act 1987*.

#### Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### **Definitions**

Consistent with modern drafting practice, the Regulations include a section titled ‘Definitions’ that lists all of the defined terms used in the Regulations. This replaces regulation 2 of the prior Regulations that was titled ‘Interpretation’. *[section 5]*

These provisions replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with modern drafting practice.

However, unlike the corresponding provision in the prior Regulations, the list of defined terms in the Regulations includes some terms that are defined elsewhere in the Regulations. The Regulations specify that these terms have the meaning given by that definition throughout the Regulations. *[section 5, definitions of applicable whole cost, applicable whole price, associate, delivered by pipeline, excisable quantity cost, excisable quantity price and relevant delivery price]*

The Regulations also include a definition of ‘number of credit days allowed’ as the period allowed for payment must be made under a contract for the sale of crude petroleum oil or condensate. The corresponding provision in the prior Regulations effectively gave this term a meaning that was substantively the same, but did not

formally define the term. This change does not affect the substantive meaning or operation of the provisions. *[section 5, definition of number of credit days allowed]*

### **Oil producing regions, production areas and VOLWARE commencement dates**

The Regulations prescribe regions as oil producing regions for the purposes of the Act. *[sections 6 and 7]*

These provisions largely replicate the corresponding provisions in the prior Regulations. However, the corresponding provisions specified regions by reference to tables that were set out in Schedules to the prior Regulations. In the Regulations, the tables are instead included in the relevant sections.

The change does not affect the substantive meaning or operation of the provisions.

### **Prescribed information**

The Regulations also contain provisions setting out information that needs to be given to the Minister in relation to transactions involving crude petroleum oil or condensate that is subject to excise in the month the petroleum is entered for home consumption. *[section 8]*

These provisions replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with modern drafting practice.

### **Calculation of transaction prices**

The Regulations also contain provisions that set out how to calculate the transaction price for crude petroleum oil and condensate. *[sections 9 to 11]*

No substantive changes have been made to the way in which the transaction price was calculated under the corresponding provisions in the prior Regulations.

These provisions replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with modern drafting practice.

### **Rules for transport costs and conversion of foreign currency**

To supplement the rules dealing with prescribed information and the calculation of transaction prices, the Regulations contain provisions for working out transport costs and the value of amounts expressed in foreign currency where it is relevant for those rules. *[sections 12 and 13]*

These provisions replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with modern drafting practice.

### **Repeal and transitional provisions**

The Regulations repeal the prior Regulations, and provide that things done under the prior Regulations before this repeal are treated as if they had been done under the Regulations. *[section 14 of the Regulations and Schedule 1 to the Regulations]*

This ensures the seamless transition from the prior Regulations to the Regulations.

**Finding Tables**

In the finding tables, references to the old regulations are to provisions in the *Petroleum Excise (Prices) Regulations 1988*, and references to the new regulations are to provisions in the Regulations. Also, in the finding tables, *no equivalent* means that this is a new provision that has no equivalent in the old regulations. Typically, these provisions are guide material or similar.

**Table 1.1: New regulations to old regulations**

<i>New regulations</i>	<i>Old regulations</i>
1	1
2	No equivalent
3	No equivalent
4	No equivalent
5	2
6	2A and Schedule 1
7	3 and Schedule 2
8	4
9	5(2) to (5)
10	5(1)
11	5A
12	6
13	7
14	No equivalent
Schedule 1	No equivalent

**Table 1.2: Old regulations to new regulations**

<i>Old regulations</i>	<i>New regulations</i>
1	1
2	5
2A	6(1) to (4)
3	7(1) to (4)
4	8
5	9 and 10
5A	11

<i>Old regulations</i>	<i>New regulations</i>
6	12
7	13
Schedule 1	6(5)
Schedule 2	7(5)

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Petroleum Excise (Prices) Regulations 2018***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The purpose of the *Petroleum Excise (Prices) Regulations 2018* (the Regulations) is to remake and improve the operation of the *Petroleum Excise (Prices) Regulations 1988* (the prior Regulations).

The prior regulations set out rules determining production areas, reporting requirements and the calculation of transaction prices for the purposes of calculation of excise under the *Petroleum Excise (Prices) Act 1987* and the *Excise Act 1901*. Under the rules set out in section 50 of the *Legislation Act 2003*, the prior Regulations are due to sunset on 1 April 2018.

The Regulations improve the operation of the prior Regulations by simplifying language and restructuring provisions for ease of navigation but do not alter the substantive meaning or operation of the provisions.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.