

## **Use of red diesel in private pleasure craft**

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### **Who is likely to be affected?**

Registered Dealers in Controlled Oils who supply red diesel to private pleasure craft; private pleasure craft users.

### **General description of the measure**

The measure provides that red diesel for use as fuel for propelling private pleasure craft can only be used in UK waters. All purchasers of red diesel for use as fuel for propelling private pleasure craft will be required to sign a declaration to that effect. All purchasers will be made aware that if they travel outside UK waters they will be subject to the restrictions and prohibitions of other Member States.

### **Policy objective**

The European Commission has challenged the UK practice of allowing the use of red diesel to propel private pleasure craft despite the condition that full duty is paid.

Limiting the use of red diesel for the propulsion of private pleasure craft to UK waters only will allow users to continue to benefit from the rebated rate for fuel used for domestic purposes on board. This measure also aims to minimise the risk of an adverse ruling by the European Courts whereby UK would be required to ensure that only white diesel is used in private pleasure craft.

### **Background to the measure**

At the end of 2006 a UK derogation to the Energy Products Directive permitting the use of rebated red diesel as fuel for propelling private pleasure craft expired and such fuel became subject to the full rate of duty.

A consultation exercise on options for implementing the new requirements resulted in overwhelming support from boat users and suppliers for the retention of red diesel. The reasons included the cost to suppliers of installing a second supply stream if a switch to white was required with likely subsequent supply problems, and the fact that red diesel could continue to be used for domestic purposes on board at the rebated rate.

In November 2008 new procedures were introduced to allow the use of red diesel to propel private pleasure craft on condition that full duty is paid.

The European Commission has challenged the UK practice, maintaining that it contravenes the fiscal marking directive (95/60/EC) and that it makes it difficult for other Member States to control the improper use of marked oils, as marking usually indicates that the oil bears a rebated rate of excise duty. This new measure aims to take account of the European Commission's concerns and minimise the risk of a successful legal challenge by allowing the use of red diesel for propelling private pleasure craft to continue if it is limited to UK waters, and if users are made aware that if such fuel is used in the territorial waters of another Member State they will be subject to the prohibitions and restrictions of that Member State.

Informal consultation with a number of representative organisations has emphasised the importance to both suppliers and users of the continued use of red diesel.

## Detailed proposal

### Operative date

The measure will have effect from 1 April 2012.

### Current law

The Hydrocarbon Oil Duties Act 1979 (HODA) section 14E provides for the use of rebated heavy oil and bioblend in private pleasure craft. Section 14E(2) prohibits the use of rebated heavy oil as fuel for propelling private pleasure craft. Sections 14E(3) to (5) allow it to be used if, at the time of supply, the purchaser makes a declaration that the fuel is to be used for propelling a private pleasure craft and an amount that is the equivalent to the rebate is paid by the supplier. Section 14E(8) defines 'private pleasure craft', 'regulations ' and 'relevant declaration'.

### Proposed revisions

Legislation will be introduced in Finance Bill 2012 to amend HODA section 14E. A new subsection will require the declaration to include an acknowledgement that the UK procedures for the use of red diesel in private pleasure craft do not affect any restrictions or prohibitions under the national laws of other Member States. The definition of relevant declaration in section 14(E)(8) will be amended to state that the heavy oil or bioblend is to be used only as fuel for propelling private pleasure craft within UK waters. A definition of United Kingdom waters will be added to section 14E(8).

### Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	-	-	-	-	-
	This measure is not expected to have an exchequer impact.				
Economic impact	No significant economic impact.				
Impact on individuals and households	There is no compliance cost impact on individuals because this only affects the use of red diesel in private pleasure craft in UK waters and as such there is no change to the current procedures or the current tax rates.				
Equalities impact	There is no impact on any of the equality groups.				
Impact on businesses and third sector	There will be a small cost to fuel suppliers who will be required to amend the declaration that is signed and dated by the purchaser of fuel and which they are required to retain in their records. Following informal discussions with the organisation representing suppliers the Admin Burdens has been kept to a minimum and are considered to be negligible				

Operational impact (£m) – [HMRC or other]	There is no cost to HMRC.
Other impacts	There will be some small businesses supplying fuel to private pleasure craft that will be affected by this measure. They will still have to amend the declaration as would firms of other sizes. However from the above mentioned discussions the impact of the change has been kept to a minimum.

### **Monitoring and evaluation**

This policy may be kept under review through communication with taxpayer groups affected by the measure.

### **Further advice**

If you have any questions about this change, please contact the Excise and Customs Helpline on 0845 00 900.

### **Declaration**

Chloe Smith MP, the Economic Secretary to the Treasury, has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.

**1 Rebated fuel: private pleasure craft**

- (1) Section 14E of HODA 1979 (rebated heavy oil and bioblend: private pleasure craft) is amended as follows.
- (2) After subsection (7) insert—
  - “(7A) A relevant declaration must include an acknowledgement that nothing in this section or done under it (including the making of the declaration) affects any restriction or prohibition under the law of a member State other than the United Kingdom on the use of the heavy oil or bioblend as fuel for propelling craft outside United Kingdom waters.”
- (3) In subsection (8)—
  - (a) omit the “and” after the definition of “regulations”,
  - (b) in the definition of “relevant declaration” for “as fuel for propelling private pleasure craft” substitute “only as fuel for propelling private pleasure craft in United Kingdom waters”, and
  - (c) after that definition insert—
    - ““United Kingdom waters” means any waters (including inland waters) within the seaward limits of the territorial sea of the United Kingdom.”
- (4) The amendments made by this section have effect in relation to supplies made on or after 1 April 2012.

**EXPLANATORY NOTE**

**REBATED FUEL: PRIVATE PLEASURE CRAFT**

**SUMMARY**

1. This clause amends the Hydrocarbon Oils Duties Act 1979 (HODA). It provides for the declaration made by a person when purchasing heavy oil or bioblend for use as fuel for propelling a private pleasure craft to include a requirement that the fuel will be used only for propelling such a craft within UK waters and an acknowledgement that any restrictions and prohibitions under the national laws of other Member States are not affected. It also introduces a definition of United Kingdom waters.

**DETAILS OF THE CLAUSE**

2. Subsection (2) introduces a new subsection (7A) into section 14E HODA to provide that a relevant declaration must include an acknowledgement that any restrictions and prohibitions under the national laws of another Member State on the use of heavy oil or bioblend as fuel for propelling private pleasure craft outside UK waters are not affected by the UK provisions.
3. Subsection (3) amends the definition of 'relevant declaration' in subsection (8) of section 14E to provide that the heavy oil or bioblend is to be used only as fuel for propelling private pleasure craft in United Kingdom waters, and introduces a definition of 'United Kingdom waters' as any waters, including inland waters, within the seaward limits of the territorial sea of the United Kingdom.
4. Subsection (4) provides for the changes to have effect in relation to supplies made on or after 1 April 2012.

**BACKGROUND NOTE**

5. This clause provides for the use of red diesel as fuel for propelling private pleasure craft only within United Kingdom waters. On [20] February 2012 the Economic Secretary to the Treasury, in a Written Ministerial Statement, explained that the changes would be made following a challenge by the European Commission to the UK practice of allowing marked 'red diesel' with the full duty paid to be used in this way, maintaining that it was contrary to EU legislation on the marking of fuels.
6. The changes ensure that red diesel can continue to be used as fuel for propelling private pleasure craft in UK coastal waters and on the inland waterways in accordance with current procedures.