



Public Document Pack

North Devon Council
Brynsworthy Environment Centre
Barnstaple
North Devon EX31 3NP

K. Miles
Chief Executive.

HARBOUR BOARD

A meeting of the Harbour Board will be held in the Ilfracombe Centre - Ilfracombe on **TUESDAY, 13TH AUGUST, 2019 at 2.00 pm.**

Members of the Harbour Board

Councillor Fowler (Chairman)
Councillor Wilkinson (Vice-Chair)

Councillors Campbell and Turton

Co-opted Members:

Mr Cleary, Kift and Knill and one vacancy.

AGENDA

1. Apologies for Absence
2. To approve as a correct record the minutes of the meeting held on 4th June 2019 (Pages 5 - 10)
(Attached).
3. Items brought forward which in the opinion of the Chairman should be considered by the meeting as a matter of urgency
4. Declarations of Interest
(Please complete the form provided at the meeting or telephone Corporate and Community Services to prepare a form for your signature before the meeting) Items must be re-declared when the item is called, and Councillors must leave the room if necessary)
5. To agree the agenda between Part 'A' and Part 'B' (Confidential Restricted Information)

PART A

6. **Quarterly Designated Persons Audit Report - Ilfracombe and Lynmouth Harbours** (Pages 11 - 14)
Report by Health and Safety Manager. (Attached).
7. **Consultative Group Reports - Ilfracombe Harbour Community Forum** (Pages

15 - 16)

Minutes of meeting held on 10th July 2019. (Attached).

8. **Policies and Plans Update**

Update by Harbour Master.

9. **Aids to Navigation Update**

Update by Harbour Master.

10. **Harbour Security Update**

Update by Harbour Master.

11. **Infrastructure Update**

Update by Harbour Master.

12. **Future Projects**

Update by Harbour Master.

13. **Implementation of the Court of Justice of the European Union (CJEU) Judgement on Diesel Fuel Used in Private Pleasure Craft.** (Pages 17 - 44)

To consider the consultation document. (Attached).

14. **Appointment of Independent Members to the Harbour Board** (Pages 45 - 48)

Report by the Harbour Master. (Attached).

PART B

Nil.

If you have any enquiries about this agenda, please contact Corporate and Community Services, telephone 01271 388253

5.08.19



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NORTH DEVON COUNCIL

Minutes of a meeting of Harbour Board held at Ilfracombe Centre - Ilfracombe on Tuesday, 4th June, 2019 at 2.00 pm

PRESENT: Members:

Councillor Fowler (Chairman)

Councillors Campbell and Turton

Co-optees:

Mr Cleary, Mr Kift and Mr Knill

Officers:

Head of Resources

Also Present:

Chris Sleep, (Mayor of Lynton and Lynmouth)

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Wilkinson.

2. TO APPROVE AS A CORRECT RECORD THE MINUTES OF THE MEETING HELD ON 5TH FEBRUARY 2019

RESOLVED that the minutes of the meeting held on 5th February 2019 (circulated previously) be approved as a correct record and signed by the Chairman.

3. ITEMS BROUGHT FORWARD WHICH IN THE OPINION OF THE CHAIRMAN SHOULD BE CONSIDERED BY THE MEETING AS A MATTER OF URGENCY

(a) Complaint received regarding a possible breach of the Public Spaces Protection Order

The Chairman read out an email he had received requesting the Harbour Board take action over a possible breach of the Public Spaces Protection Order in place around Ilfracombe Harbour.

The Harbour Master advised the Board that the matter had been referred to the legal department at North Devon Council and that there was no action the Board could take in this matter.

4. DECLARATIONS OF INTEREST

The following declarations of interest were announced:

Councillor Campbell	All items – personal interest as undertook occasional work for the Landmark Trust (Lundy Island).
Councillor Fowler	All items – personal interest as a boat owner.
Mr Knill	All items – personal interest as a member of Ilfracombe Yacht Club and Secretary of YSail.

5. APPOINTMENT OF INDEPENDENT REPRESENTATIVES TO THE HARBOUR BOARD.

The Board considered a report by the Harbour Master, (circulated previously), regarding the appointment of two Independent representatives to the Harbour Board.

The Head of Resources explained the constitutional background relevant to the appointment of members to the Board.

Mr Kift declared that he would be interested in re-applying through the competitive process.

RESOLVED that, the recruitment process to be undertaken to fill the positions for two Independent representatives on the Board as detailed in paragraph 4.3 of the report be noted.

6. DESIGNATED PERSON AUDIT REPORT.

The Head of Resources provided the Board with an update following the quarterly designated person audit held on 15th and 16th May 2019 (circulated previously) in respect of the actions undertaken following the previous audit inspection, risk management and conclusions reached.

The Designated Person confirmed that the Marine Safety Management System was working effectively thus ensuring compliance with the Port Marine Safety Code.

The audit inspection had been carried out at both Ilfracombe and Lynmouth Harbours and the following updates were given by the Harbour Master:

Ilfracombe

- The replacement programme for the aluminium railings was continuing
- The laser scan of Ilfracombe Harbour which had commenced would give a high definition picture of the Harbour and highlight any

structural failures

- The leading lights at Ilfracombe harbour if they failed would need replacing in pairs. The manufacturer that supplied the lights previously was no longer in business
- A quote had been received to replace the set of leading lights which had come in at £7,000
- An annual maintenance budget for the Aids to Navigation (AtoN) of £2,000 was proposed for both Harbours
- A request for a member of the Harbour Board was made by the Harbour Master to sit on a Security Advisory Committee which met twice a year, in response to this request Mr Cleary volunteered himself
- A local artist had been secured to create an exhibition of works using driftwood and stone to be displayed in the waiting room at the Harbour
- When the pier was built in 1999 the lintels installed were not correctly positioned and with the storms in January the structure finally failed; confirmed that structural repair had now taken place
- The Harbour Master was looking at different Fender systems and would report back findings to Board Members
- The Trade waste bins had now been relocated to outside the Fishermen's compound and there was now a twice weekly collection to keep up with demand
- The oil waste tank was not very accessible so re-fencing would enable access to the tank without the need to enter the main compound
- The risk assessment for livestock in the Harbour had been completed

Lynmouth

- Research had been carried out to find a solution to the issue of hand rails needed to access vessels from the Harbour wall and which were not visible above the wall level. A railing had been found which could be clipped to the wall when in use then unclipped when not in use
- There was to be a meeting with the Environment Agency to discuss gated access requirements at the site of the flood defence wall
- Signage was to be erected at the flood wall end of the Harbour Arm advising that the Arm was for emergency use only
- Signs were to be installed at the top and bottom of the slipway advising that the area was a working Harbour and that access was restricted to Harbour users and escorted passengers

RESOLVED that the findings of the Designated Audit Person's report be noted.

7. MARINE SAFETY MANAGEMENT SYSTEM

The Board considered the Ilfracombe Harbour Marine Safety Management System report, (circulated previously), by the Harbour Master.

The Harbour Master advised the Board that she was to complete an audit training course to become fully qualified. This qualification would mean the audit could be carried out internally every four years instead of paying an external organisation.

Mr Cleary, Independent Member, felt an amendment was needed to replace a word in the fourth paragraph under item 2.1.2 in the report instead of “excising” the word should read “exercising”. He also felt it prudent to ask the legal department to check over the document.

RESOLVED that the Ilfracombe Harbour Marine Safety Management System be noted.

8. PORT MARINE SAFETY CODE

The Board received an update from the Harbour Master in relation to the Port Marine Safety code as follows:

- The Emergency Plan policy was due for renewal on 28th June 2019 and a copy of this would be emailed to the Board Members once available
- Performance Indicators, which measured how well the Harbour Master was performing, were to be looked at as some of the existing markers were not giving an accurate measure of performance. Planned maintenance looking at how well the Harbour was being maintained gave an overview of all staff working on the Harbour not the Harbour Master alone, another good marker would be risk assessment reviews carried out along with complaints response
- There was now an electronic means of recording safety such as fire drills and alarm checks as well as extinguisher testing
- The Harbour used a software programme called HAZMAN for risk assessments and, when set up, there was an incident database module that would collate all near misses and/or incidents using online reporting which would enable the report of such incidents to be anonymous, if desired
- All near misses must be reported as well as any spillages.

9. HARBOUR MASTER UPDATE

The Harbour Master gave the Board an update as follows:

- The new lease for the Yacht Club was being finalised and under the new agreement they would be responsible for maintenance

- of the shower and toilet block as well as the charges for usage
- Ilfracombe Town Council were now in agreement on the use of live falconry in Ilfracombe to help combat the seagull activity
- The overpopulation of seagulls in and around Ilfracombe was causing the aggressive behaviour as food was being fought for
- Lynmouth did not experience the same problem with seagulls
- The Waste Shark was being returned to Holland for a software update
- Donations had been received from M&E Alarms and TDK Lambda towards the cost of the launching system. An application had been made to the Area of Outstanding Natural Beauty grant fund for the remaining amount needed
- In preparation for the replacement Shark a tidal matrix was being drawn up
- The Harbour Master and Head of Place had met and agreed on areas of the separation of revenues from the Water Sports Centre

In response to a question about Personal watercraft users not paying correctly, the Harbour Master advised that it was hoped to extend the sticker system in use at Ilfracombe and Lynmouth for personal watercraft users to Bideford and Appledore by extending the Memorandum of Understanding.

10. WASTE MANAGEMENT PLAN

The Board considered the report by the Harbour Master, (circulated previously), and the Harbour Master gave the following additional information in relation to waste management and recycling:

- A meeting was scheduled to take place with the Head of Operations and others to discuss recycling options and the correct collection of different recycling materials
- A quote of £3,000 had been received for the creation of a bottle and drinks can shaped cut out in front of the respective bins.

RESOLVED that the Ilfracombe Harbour Authority Waste Management plan May 2019, be adopted.

11. HARBOUR FORUM UPDATE.

In the absence of the Chairman of the Harbour Forum the Harbour Master gave a brief update, minutes of the last Forum meeting held on 21st May 2019 were tabled. The Board received the following updates:

- Attendance numbers at the Forum had dropped off so adverts had been placed to attract new members
- The Water Sports project officer had attended the last Forum meeting and gave an update on progress. With projected capital

costs having escalated the grant money already secured was now short of the new estimate.

The Head of Resources gave the Board a summary of the current situation with the Water Sports Centre and explained that all potential new options would be presented to Members at a future Council meeting. Any Revenue cost of extending the Water Sports Centre project officer's contract would need to be presented as part of the business case to Council. The Head of Resources explained that the funding for regeneration projects came from bids for grants and if costs went up further funding had to be applied for. Lessons had been learned and future projects would benefit from this learning curve.

Chairman

The meeting ended at 3.55 pm

NOTE: These minutes will be confirmed as a correct record at the next meeting of the Board.

HARBOUR BOARD MEETING: 13TH AUGUST 2019

Quarterly Designated Person Audit Report - Ilfracombe & Lynmouth Harbours

Ilfracombe- 12th July 2019- Captain Georgina Carlo-Paat (Harbour Master), Jon Triggs, (Designated Person) and Pamela Charles (H&S Adviser)

Lynmouth- 24th July 2019- Kevin Harris, (Town Clerk), Chris Sleep (Mayor), Captain Georgina Carlo-Paat (Harbour Master), Jon Triggs, (Designated Person) and Pamela Charles (H&S Adviser)

Also in attendance: Cllr Rodway and Will Bowden (Harbour Users Group and Lynmouth Sailing Club)

1. PURPOSE OF REPORT

- 1.1 To advise Members of the Harbour Board of the outcome of the quarterly audits.
- 1.2 The quarterly audits are carried out to fulfil the responsibility placed upon the Designated Person (DP) to ensure the Marine Safety Management System is working correctly in compliance of the Port Marine Safety Code.

2. ACTIONS COMPLETED FROM PREVIOUS INSPECTIONS- ILFRACOMBE

- 2.1 The ABPmer Safety of Navigation Risk Survey of the Harbour final report was received. The findings were that although the costs would be the same, the risks of siting of the Water Sports Centre at Cove were slightly lower than at Larkstone due to the direction of traffic.
- 2.2 The pedestrian walkway on the working side of the Harbour has been repainted so that the pedestrian path is now clearly defined for users.
- 2.3 The roof to the fuel tank has been painted.
- 2.4 Temporary measures have been taken to deal with the fender damage to fenders on the Cove.
- 2.5 All Port Facility Security measures are in place ready for the Cruise Ships arriving in August.
- 2.6 A risk assessment is now in place for the risk of dead animals washing up in the Harbour.

3. RISK MANAGEMENT- ILFRACOMBE

- 3.1 An audit of the Ilfracombe Harbour Marine Safety Management System found no deficiencies, only some minor amendments, none of which affect the overall operation of the MSMS.

Agenda Item 6

- 3.2 Improvements to CCTV have been approved in principle. A report will be presented to Full Council in Sept 2019.
- 3.3 Inner steps on Old Quay Head- work still to be carried out regarding the new hand rail and highlighting of middle step.
- 3.4 Replacement of dock ladders- Visit to Bristol Port to research types/materials - work still to be carried out.
- 3.5 Isolation of oil tank in compound- work still to be carried out.
- 3.6 Sliding doors to fishermen's huts on Old Quay Head – North Devon Council Estates Service are currently negotiating surrendering part and granting a new lease to tenant. Repairing obligations currently remain with the tenant however the tenant does not believe there to be any repairs required to the doors. If agreeable terms can be reached then NDC will undertake the repairs to a good standard but this is subject to agreement.
- 3.7 Plan to install new electrical conduits on Old Quay Head- ongoing.
- 3.8 Laser scan reports are still to be received by Engineers.

4. ACTIONS COMPLETED FROM PREVIOUS INSPECTIONS- LYNMOUTH

- 4.1 Signage now placed at the top of the slip way advising that this is a working harbour and access is restricted to harbour users.
- 4.2 The worn white line has been re-marked at the top of the slipway, but requires further painting to emphasise the marking.
- 4.3 The worn white paintwork at the edge of the steps up to the slipway has been repainted.
- 4.4 Signage has been placed at the flood wall end of the Harbour Arm advising that the Arm is for emergency use only.
- 4.5 A site meeting has taken place with the Environment Agency (EA) to discuss the type of gate that will be acceptable to install in the flood wall. It is hoped that a suitable agreement has been reached.

5. RISK MANAGEMENT – LYNMOUTH

- 5.1 Documentation for the Harbour is incomplete and currently does not comply with the requirements of the Port Marine Safety Code (PMSC)
There is currently no documented Safety Plan. The Safety Plan is required to show how the standards in the PMSC will be met.
- 5.2 Hand rail not yet fitted to the wall on the left hand side of the slip way.
- 5.3 The hand rail from the bridge steps to the flood wall will be extended to provide a barrier across the low wall on the right hand side of the flood wall.

Agenda Item 6

5.4 During the meeting with the Environment Agency it was discussed that the stone work to the flood area was considered substandard and was already starting to be broken up by the incoming tides. Remedial works will be required by the EA.

5.5 Worn and broken steps down to the internal harbour repairs required-ongoing.

5.6 Work to the Causeway- ongoing.

6. CONCLUSIONS

6.1 Health and Safety at Ilfracombe Harbour is being proactively managed by the Harbour Master. A number of terms identified as health and safety issues have been addressed since the previous audit visit. Some matters are taking longer to resolve and are ongoing.

6.2 Health and Safety at Lynmouth Harbour is being proactively managed by the Town Clerk. A number of items identified as health and safety issues have been addressed since the previous audit visit. Some matters are taking longer to resolve and are ongoing. Documentation requirements needs addressing to ensure compliance with the PMSC.

Pamela Charles
H&S Adviser
July 2019

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Ilfracombe Harbour Community Forum

Minutes of Meeting 10.7.19

1. Lawrence welcomed those present and commented on the many absentees.

2. Apologies: Geoff Fowler, June Williams, Paul Prideaux, John Barbeary, Dudley Jenkins, Dave Welch, Leigh Hanks, Stuart Carpenter, Dawn

All present registered: Lawrence Raybone, Chair; Andrew Bengely, Dive Charters; Daryl Furnston and Chris Tappenden IDTA and Hoteliers; George Carlo-Paat, Harbourmaster; Chris Wallis, RNLI; Bert Gear, Ilfracombe Town Council; Wayne Thomas, Combe Martin Sea Angling Club; Kevin Prideaux, Pub Licensees; Carol Chapple, Lantern Court

3. Minutes and matters arising: Minutes approved and seconded. Wayne to add to matters arising.

5. Harbour Master's update: George thanked Carol for raising £300 for the Wave Shark Raffle.

AONB has granted money to George. Crane Base can now be constructed, The Royal Marines have offered to build the shark cage and presently looking at this. Still looking for more funding.

Security Committee for the harbour – invitations extended to personnel to join, to discuss harbour security and safety.

Cost-saving improvements being looked into. George is off to Bristol to look at improvements including fendering and the use of composites. Ladders for harbour can be composite – possibly only yellow.

Extra bin placed down Quay Road, and one to come for Marine Drive by car park sign.

Proposal for new recycling bins to come.

Improvements to litter collection/ street cleaning/harbour loos' cleanliness. Ken Miles, Chief Exec., doing well. Giving responsibility to different groups involved.

Email from Chris Farris discussed re Watersports Centre. Funding deficit of £700,000. The Cove is a possible and cheaper site option, though Larkstone is still the preferred option. There will need to be a designated watersports area at the harbour, and all the water needs managing. Many points for and against both venues. The deficit will be crucial in the calculation. The ultimate goal is to **have a water sports centre**. There are no major restraints on the grant but final decision is needed soon. All want it to go ahead. Spread the word that all comments on both locations, positive or negative, should go to Chris Farris and/ or George.

There was a discussion as to whether the centre could be used by angling clubs.

4. Wayne from CMSAC presented a Fun Fishing Event to be held in Ilfracombe on 1st September, last day of Sea Ilfracombe. Between 13.00 and 16.00 hours. Would there be a lot of boat movement? It is low water. George stated that there were no 'big' ships due in but also warned that small commercial boats would be in full swing and to ask closer to the date.

6. AOB

MV Rotterdam arrives for the day, 9th August. Events4Ilfracombe in charge of the day's organisation. On returning from tours, passengers will be dropped in Ropery Road or by Pip & Jims, so have to walk past harbour businesses.

Agenda Item 7

3 herring gull attacks in Ilfracombe this week. One boy slightly injured. Comment that visitors don't really appreciate the slogan 'don't feed the Gulls'. Is there a high enough profile?

Holiday makers have complained to TIC about the commercial boat operators' tactics. TIC to tell visitors that if they feel pressured by operators, they should contact the harbourmaster. One answer is to get rid of kiosk 3 so visitors aren't bombarded from both sides and can walk on the "other" side.

NOTE: After following up on the above it has transpired that the 'complaint' was in fact a question from a holiday maker who had not actually experienced this at Ilfracombe as he had not been to the Harbour due to having been 'bombarded by ticket sellers' at other Harbours. Once the PSPO was explained he went on to book tickets with the TIC and then came down to the Harbour. He did not return to the TIC so no further follow up as to his experience on the Harbour can be added.

Harbour toilets still not up to standard in cleanliness. Would local businesses be willing to sponsor an extra cleaning time during the summer months?

Lawrence apologised for not actioning a point from the last meeting re cigarette butts. There are not enough receptacles. Bert showed a picture of a template logo around a drain saying "the beach starts here". Couldn't local businesses provide sand buckets for the stubs?

Lawrence is offering his Chairmanship to AN Other as his time as chair is up – by autumn please!

Deck chairs on the beach are legal and person running them is keeping the beach clean.

Meeting closed 19.45.



HM Revenue
& Customs

Implementation of the Court of Justice of the European Union (CJEU) judgment on diesel fuel used in private pleasure craft

Consultation document

Publication date: 15 July 2019

Closing date for comments: 9 September 2019

Agenda Item 13

Subject of this consultation:	How to implement the 2018 judgment of the Court of Justice of the European Union (CJEU) (case C-503/17) which ruled that it is contrary to the Fuel Marker Directive that the UK allows rebated fuel (red diesel) to propel private pleasure craft, even though the user of the fuel pays their supplier the duty differential between red diesel and unmarked (white) diesel on the amount used to propel their craft.
Scope of this consultation:	This consultation outlines how the government intends to implement the judgment by requiring private pleasure craft to use white diesel for propulsion, and seeks evidence regarding the impact this will have on users of diesel propelled craft operating in UK inland waterways and along the coast, and the companies that supply diesel to them. The responses will be used to help determine whether a period will be required for suppliers, known as Registered Dealers in Controlled Oils (RDCOs), and users of diesel fuel to adapt to using only white diesel for propulsion of private pleasure craft and, if needed, the length of any such period.
Who should read this:	UK users of diesel propelled craft, particularly private pleasure craft, and those involved in the supply of fuel to UK craft (in particular operators of ports, marinas and inland waterway refuelling stations).
Duration:	8 weeks – closing date 9 September 2019.
Lead official:	Gary Satchell, Excise & Environmental Taxes Policy Design Team
How to respond or enquire about this consultation:	Enquiries and responses should be emailed to gary.satchell@hmrc.gov.uk or sent by post to Gary Satchell Excise & Environmental Taxes Policy Design Team HM Revenue & Customs Room 3/36, 100 Parliament Street London, SW1A 2BQ Telephone (Mondays to Thursdays only): 03000 585802
Additional ways to be involved:	During the consultation period HM Revenue & Customs (HMRC) plans to meet representatives of industry associations and RDCOs that supply red diesel to private pleasure craft users.
After the consultation:	A summary of responses will be published after this consultation concludes. This consultation will inform when the changes will be brought into effect in legislation and whether any adjustment period is needed.

Getting to this stage:

In 2003 all EU Member States agreed the Energy Taxation Directive. In doing so, the UK government agreed that its practice at the time of allowing private pleasure craft to purchase and use red diesel in the UK to propel their craft should end by 2007.

In 2007 the government published a consultation on options to bring the UK's law on use of red diesel in private pleasure craft into compliance with the Directive.

Following the consultation, the government decided to allow private pleasure craft users to continue to use red diesel for propulsion, subject to users paying the difference in duty between the red and white diesel rates (to meet the Energy Taxation Directive requirement that private pleasure craft must use diesel taxed at the white diesel rate for propulsion).

On 17 October 2018 the CJEU ruled that this practice was in breach of the Fuel Marker Directive (95/60/EC).

Previous engagement:

A full consultation exercise took place in 2007 to establish the current practice.

During the lead up to the CJEU case and/or since the judgment, HMRC has consulted a range of stakeholders, including the Cruising Association, the Royal Yachting Association, British Marine, the Angling Trust, the Barge Association, the Residential Boat Owners' Association and Inland Waterways Association.

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On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Executive summary

1.1 In 2018, the Court of Justice of the European Union (CJEU) ruled that the UK's taxation rules for diesel used in private pleasure craft contravened the Fuel Marker Directive. The Directive is designed to ensure that any misuse of diesel crossing European Union internal borders can be detected given the variation in duty treatment in member states. This consultation sets out the changes the government intends to make to bring the UK's practice into line with the Directive and seeks evidence about the impact of the changes on users of diesel powered craft and their fuel suppliers.

1.2 In the UK there are two forms of diesel:

- Unmarked **(white) diesel** - primarily for use by vehicles on public roads and attracting the full Fuel Duty rate of 57.95 pence per litre.
- Marked **(red) diesel** – this is marked with a dye (red in the UK) and used for all other uses e.g. agricultural vehicles, commercial craft and trains. The dye is readily detectable and there is a system of testing of diesel vehicles to ensure only those entitled to use it benefit from the rebated duty rate of 11.14 pence per litre.

1.3 The Energy Taxation Directive states that fuel used in private pleasure craft for propulsion must be charged at the full duty rate. When this rule came into force in 2007, such craft were using red diesel charged at the rebated rate and users of private pleasure craft in the UK cited significant practical difficulties to switching to white diesel. In response, the UK devised a pragmatic scheme of allowing private pleasure craft to continue to use red diesel for propulsion but require their fuel supplier to collect from the craft operator the difference in duty between the red and white diesel rates, and pay the additional duty to HM Revenue and Customs.

1.4 In 2018, the CJEU ruled that the UK's practice of allowing private pleasure craft to use red diesel that had duty paid on it at the white diesel rate was contrary to the Fuel Marker Directive. While the UK is a member of the EU and under any implementation period agreed as part of our exit from the EU, we are obliged under international law to implement the judgment or risk substantial fines.

1.5 The government intends to remove the option of private pleasure craft to use red diesel for propulsion and require them to use white diesel because the other options available have been ruled illegal by the CJEU. This consultation seeks information on how two groups of stakeholders (fuel suppliers and users of private pleasure craft) will be affected by the proposed change and asks them how they are likely to respond. This information will be used to determine whether an adjustment period between the current and revised arrangements should be introduced. We are particularly interested in finding out whether requiring private pleasure craft to use white diesel could lead to significant parts of the UK's inland waterway network/coastline having insufficient supplies of red or white diesel.

2. Introduction

Taxation of fuel used by pleasure and other craft

2.1 Fuel Duty on hydrocarbon oils (including petrol and diesel) in the UK is charged at the first point of entry of the fuel into the UK market. This is likely to be when the fuel is released from the import terminal or refinery. If diesel is intended not to be used to propel a vehicle on public roads it is rebated fuel (known as 'red diesel' because of the dye put into the fuel in the UK to detect misuse). Red diesel is currently taxed at 11.14 pence per litre instead of 57.95 pence per litre for unmarked (white) diesel used to propel a vehicle on the public roads. Any controlled oil in the UK, which includes red diesel, must be purchased from a Registered Dealer in Controlled Oils (RDCO).

2.2 Private pleasure craft with a diesel engine (such as canal boats, yachts and motorboats) are currently allowed to use red diesel for both propulsion and for non-propulsion uses on board such as heating, lighting and charging the boat's battery. They must, however, pay the RDCO from whom they purchased the fuel the duty differential for the amount of red diesel they estimate they will use to propel their craft so, in effect, the fuel used to propel is charged at the white diesel rate. The red diesel used for non-propulsion use (which is occasionally in a separate tank to the fuel used for propulsion) is taxed at the red diesel rate.

2.3 Private pleasure craft with petrol engines use fuel that has been charged the full duty rate, currently 57.95 pence per litre, for both propulsion and non-propulsion uses.

2.4 The UK has a large number of private pleasure craft, but a relatively small number of RDCOs covering a large inland waterway network and coastline. Great Britain has a navigable canal and river network of 4,700 miles (7,520 km) while the UK coastline is 10,646 nautical miles (19,717 km) long¹. There are approximately 150,000 private pleasure craft in the UK supplied by around 370 RDCOs. In the tax year 2017-18 around 6,400,000 litres of red diesel were supplied to private pleasure craft.

2.5 Commercial craft (such as fishing boats, river cruise ships and ferries) are able to use red diesel for propulsion and on-board non-propulsion use.

2.6 The Energy Taxation Directive (2003/96/EC), agreed by EU Member States in 2003, was designed to harmonise energy taxation across the EU to facilitate trade within the EU's single market. At the time, the UK, the Republic of Ireland and a number of other Member States allowed operators of private pleasure craft to use red diesel for propulsion of these craft. The Directive allowed this practice to continue until 2007. It also allowed commercial craft to continue to use red diesel indefinitely.

¹ EU Member States Finland and Sweden have longer coastlines but unlike the UK these are not continuously navigable because on average 40% of the total Baltic Sea area is frozen during winter (Finnish Meteorological Institute: <https://en.ilmatiiteenlaitos.fi/ice-winter-in-the-baltic-sea>).

2007 consultation

2.7 In 2007, the then government published a consultation with three options to bring the UK's law on use of red diesel in private pleasure craft into compliance with the Energy Taxation Directive. These options were:

- Option A – Red diesel supplied to operators of private pleasure craft for all uses (including propulsion) but require the suppliers of the red diesel (the RDCOs) to collect additional duty (the difference in duty between the red diesel rate and the full rate which is payable on unmarked, white diesel) on the diesel used for propulsion.
- Option B – Allow operators of private pleasure craft to use red diesel for propulsion but require them to declare the amount of diesel they purchased during a tax year and pay HM Revenue & Customs (HMRC) the duty differential between the red and white diesel duty rates multiplied by the number of litres they purchased for propulsion.
- Option C – Remove the right of private pleasure craft operators to use red diesel for propulsion, thereby requiring them to use white diesel.

2.8 In responding to the consultation:

- Only a minority of fuel suppliers (25%) stated that they would make both red and white diesel available, citing cost, fuel throughput and practical difficulties as the main barriers to supplying both.
- Many boat owners voiced concerns over the need to drain down their tanks, flush them, and replace filters before refuelling with white diesel and even then being unsure how long marker residue would continue to taint their fuel.
- Boat owners, particularly around northern Scotland, voiced concerns about not being able to access white diesel due to the predominance of commercial craft (who are allowed to use red diesel) operating in that area.

2.9 Following the consultation, the UK decided to introduce option A with effect from 1 April 2008. The Republic of Ireland introduced option B. Option C was not introduced in light of the concerns voiced by the respondents to the consultation, particularly the likely availability of white diesel and the length of time that the marker in red diesel would remain in fuel tanks after craft started using white diesel.

Complaint to the European Commission and CJEU judgment

2.10 Following a complaint from another Member State in 2010, the European Commission launched a legal challenge against the UK for allowing the continued use of red diesel for propulsion. During this process they accepted that the UK complied with the Energy Taxation Directive because operators of private pleasure craft were paying the correct amount of duty on the diesel used to propel their craft. However, they concluded that the UK was in breach of the Fuel Marker Directive (95/60/EC) because diesel that had been supplied to private pleasure craft was red diesel but had

duty charged on it as if it were white diesel. The Commission believed this would make it difficult for Member States to determine whether UK private pleasure craft had purchased red diesel legally in the UK or illegally in a country where they must use unmarked fuel. The Commission also launched action against the Republic of Ireland for breaches of both the Fuel Marker Directive and the Energy Taxation Directive.

2.11 Both the UK and Irish governments believed their schemes complied with the law and therefore the cases were determined by the CJEU. On 17 October 2018 the CJEU ruled that the UK was in breach of the Fuel Marker Directive (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62017CJ0503&from=EN>) and that the Republic of Ireland was in breach of both Directives, largely for the reasons outlined by the Commission.

Purpose of the consultation

2.12 While it is legally bound by the Fuel Marker Directive (including during an implementation period agreed as part of our exit from the EU), the UK has a duty to implement the CJEU ruling. This consultation therefore outlines the government's intended approach. Since options A and B above have been ruled unlawful by the CJEU, the government intends to implement option C above and this consultation seeks information to inform the implementation, including whether any adjustment period may be required.

2.13 The government is therefore seeking evidence about the impact that the changes proposed in chapter 3 will have on users of diesel powered craft and their fuel suppliers. The focus of this consultation is therefore on the practical implications of the policy change. In particular, the consultation seeks evidence on how RDCOs will respond and the time period they require to change their processes if they are to supply both types of diesel where they currently do not. For example, we need to establish what fuel RDCOs will choose to supply following the change and whether this could lead to large sections of the UK's inland waterway network and coastline with insufficient supplies of either red diesel (for commercial craft) or white diesel (for private pleasure craft). This will help inform decisions on whether a period is needed to adapt and, if so, for how long.

The consultation process

2.14 The consultation will run for 8 weeks and will therefore close on 9 September 2019. Responses to this consultation will be analysed by HMRC and a summary of responses document will be published after this consultation concludes.

2.15 If interested parties need assistance before sending a formal response to the consultation they should email gary.satchell@hmrc.gov.uk and ask for advice.

2.16 HMRC plans to meet interested associations to discuss these proposals. As there are up to 4 million users of private pleasure craft in the UK each year, it is not practical to organise a meeting for users. If you are a member of a trade association please contact that association if there are any issues you wish them to raise. You may also wish to discuss with them the most effective way of ensuring your views are heard.

3. Proposed policy changes

Overview of the change

3.1 The government intends to abolish the scheme introduced in 2008 that allowed users of diesel powered private pleasure craft (e.g. yachts, canal boats and motorboats – the definition used in the EU Directive is reproduced in Annex A) to purchase red diesel and pay the duty differential between red and white diesel on the fuel used for propulsion. It intends to remove the right of operators of such craft to use red diesel for propulsion and mandate the use of white diesel. Users will be allowed to continue to use red diesel for on-board non-propulsion use where they have a separate fuel tank for this purpose. This means that craft with only one tank will pay more tax than they currently do as they will have to purchase fuel taxed at the higher white diesel duty rate for both propulsion and non-propulsion uses, and pay the standard rate of VAT as white diesel is not eligible for the reduced rate of VAT.

3.2 The government intends to use this consultation to establish whether a period of adjustment is needed between the current arrangements and the proposed changes. The commencement date will therefore be determined following this consultation.

Residential boats

3.3 The government intends that boat owners whose primary, or only residence, is their boat should continue to be allowed to purchase and use red diesel. These residential boats will generally be at fixed moorings or will move occasionally just a very short distance along the tow path to another permanent mooring. In order to continue to purchase red diesel residential boat owners should satisfy their RDCO supplier that their craft is permanently moored by providing documentation such as:

- Houseboat Licence
- Residential Mooring Licence
- Council Tax bill in respect of the mooring, or
- Invoices, or bills.

This maintains the current practice as outlined in Excise Notice 554².

3.4 Houseboats with no motor and no fuel tank for propulsion will continue to be able to use red diesel.

Continuous cruisers

3.5 While continuous cruisers (boats without a permanent home mooring) do use their craft for shelter as a permanent home, unlike residential boat owners described in paragraph 3.3, they do not tend to stay in one location for long periods of time. The Energy Taxation Directive requires that private pleasure craft must use diesel taxed at

² <https://www.gov.uk/government/publications/excise-notice-554-fuel-used-in-private-pleasure-craft-and-for-private-pleasure-flying/excise-notice-554-fuel-used-in-private-pleasure-craft-and-for-private-pleasure-flying#purchasers-of-marked-gas-oil-for-use-in-private-pleasure-craft>

the white diesel rate for propulsion and the definition of such craft in the Directive includes continuous cruisers, which are highly likely to use a higher proportion of fuel for propulsion than boats at fixed moorings. Following the abolition of the current scheme, operators of private pleasure craft purchasing diesel will have to use white diesel for propulsion. Craft with one fuel tank for propulsion and a separate one for non-propulsion uses on board will be able to use red diesel for non-propulsion uses.

Commercial use

3.6 No changes are planned to the current position that commercial craft are able to use red diesel for propulsion and on-board non-propulsion use.

Mixed use – commercial with occasional private use and vice versa

3.7 A craft may have mixed use. For example, they may be predominantly for commercial use with some private pleasure use or vice versa. Currently, these vessels may use red diesel, for their commercial use, but must pay the additional duty on fuel used for private pleasure journeys. While red diesel may be used for commercial journeys, the government intends to require craft that are used for private pleasure to be fuelled only with white diesel for private pleasure trips. This means operators would have to drain and flush the fuel tank and refuel with white diesel before any private pleasure use. However, this would not be required when changing use from private to commercial use.

Petrol powered private pleasure craft

3.8 No changes are planned for those using petrol to propel their private pleasure craft.

Penalties

3.9 As part of the implementation of these changes, the government intends to align penalties for misuse of red diesel in private pleasure craft with the current penalties for misuse in road vehicles. This will treat any misuse of red diesel for use on the road and on water in a similar way, following any adjustment period. Excise Notice 75³ contains references to the legislative provisions on penalties for misuse of rebated fuel (red diesel) in road vehicles and has been used to determine the proposed penalties for misuse of rebated fuel by private pleasure craft users. Annex B summarises the current position for misuse by road vehicles and the changes proposed for pleasure craft.

Impact on private pleasure craft visiting/refuelling in EU Member States

3.10 Under the current arrangements, private pleasure craft refuelling in the UK should retain their receipts so that these can be presented to EU Member States' customs authorities if challenged about the presence of red diesel in their fuel tank. UK associations have worked with the authorities in maritime states to ensure they are aware of the UK arrangements, to try to ensure that those sailing UK craft into these

³ <https://www.gov.uk/government/publications/excise-notice-75-fuel-for-road-vehicles/excise-notice-75-fuel-for-road-vehicles#the-law>

states with red diesel in their engine tank(s), have not been apprehended for contravening EU regulations on the use of marked fuels. The government will be notifying EU maritime states of the UK's arrangements for implementing the CJEU ruling to ensure they are aware that there may temporarily continue to be traces of red diesel present in the diesel tanks of UK boats used for propulsion. In the period leading up to the commencement of the changes, the UK will seek assurances that authorities in other maritime states will take no enforcement action before the commencement date and HM Revenue & Customs (HMRC) will publish guidance for UK boaters. In the meantime, boat operators travelling to EU Member States should continue to retain receipts for purchases of diesel.

3.11 The proposed changes will not affect the ability of UK private pleasure craft to refuel in EU Member States. Users should continue to abide by the law of the Member State they are visiting when travelling and refuelling.

VAT legislation

3.12 Legislation covering supplies of non-propulsion fuel and power for VAT purposes allows certain types of gas oil to be eligible for the reduced rate of VAT (currently 5%). White diesel is specifically excluded from these provisions and so is subject to the standard rate of VAT (currently 20%).

3.13 Currently any rebated red diesel, or any red diesel used by private pleasure craft for propulsion, which in effect bears the white diesel rate, is eligible for the reduced rate of VAT if the supply is of less than 2,300 litres. Following these changes, supplies of red diesel up to 2,300 litres will continue to be eligible for the reduced rate of VAT. Therefore, any private pleasure craft with a separate fuel tank for non-propulsion, purchasing a supply of less than 2,300 litres of red diesel will be charged the reduced rate of VAT.

3.14 Any supplies of rebated red diesel for private pleasure craft of over 2,300 litres for non-propulsion use will continue to be subject to the standard rate of VAT. Private pleasure craft with one fuel tank will pay standard rate VAT on the fuel they use because they will have to purchase white diesel.

3.15 Legislation covering supplies of domestic fuel or power for VAT purposes contains a specific definition of a houseboat, which is one which is not capable of self-propulsion. For these types of houseboats, any supplies of rebated red diesel will continue to be eligible for the reduced rate of VAT.

Table 1: Summary of government proposed policy changes

Use of private pleasure craft (with one fuel tank for propulsion and non-propulsion uses)	Current refuelling policy	Proposed refuelling policy
All use is pleasure (e.g. a yacht only used for leisure).	Refuels with red diesel with VAT charged at the reduced rate. Declares to the RDCO the proportion of fuel intended for propulsion and pays them the duty difference between the red and white diesel rates on this amount of fuel.	Refuels with white diesel with VAT charged at the standard rate.
Permanently moored residential boats	Refuels with red diesel with VAT charged at the reduced rate.	No change proposed.
Continuous cruisers (boats without a permanent home mooring)	Refuels with red diesel with VAT charged at the reduced rate. Declares to the RDCO the proportion of fuel intended for propulsion and pays them the duty difference between the red and white diesel rates on this amount of fuel.	Refuels with white diesel with VAT charged at the standard rate.
Mixed use – commercial with occasional private use and vice versa	Refuels with red diesel with VAT charged at the reduced rate. Declares to the RDCO the proportion of fuel intended for propulsion on a private pleasure craft and pays them the duty difference between the red and white diesel rates on this amount of fuel.	Refuels with red diesel for commercial use with VAT charged at the reduced rate. Required to drain and flush the fuel tank and refuel with white diesel with VAT charged at the standard rate before any private pleasure use. However, this will not be required when changing use from private to commercial use.
Extending relevant powers of detection for HMRC, offences and penalties (see paragraph 3.9 and Annex B).		

3.16 Commercial only craft currently use red diesel for both propulsion and non-propulsion uses on board. The policy proposal does not change this.

4. Assessment of impacts

Summary of Impacts

Exchequer impact (£m)	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	Total																								
	-	-	neg	neg	neg	neg	neg																								
	<p>This measure is expected to have a negligible impact on the Exchequer. The final costing will be subject to scrutiny by the Office for Budget Responsibility and will be set out at a later date.</p>																														
Funding for measures	<p>The latest cost estimates for implementing this measure are as follows:</p> <table border="1"> <thead> <tr> <th></th> <th>18/19</th> <th>19/20</th> <th>20/21</th> <th>21/22</th> <th>22/23</th> <th>23/24</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>RDEL (£m)</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> </tr> <tr> <td>CDEL (£m)</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> </tr> </tbody> </table>								18/19	19/20	20/21	21/22	22/23	23/24	Total	RDEL (£m)	Nil	Nil	Nil	Nil	Nil	Nil	Nil	CDEL (£m)	Nil	Nil	Nil	Nil	Nil	Nil	Nil
	18/19	19/20	20/21	21/22	22/23	23/24	Total																								
RDEL (£m)	Nil	Nil	Nil	Nil	Nil	Nil	Nil																								
CDEL (£m)	Nil	Nil	Nil	Nil	Nil	Nil	Nil																								
Economic impact	<p>This measure is not expected to have a significant economic impact.</p>																														
Impact on individuals, households and families	<p><u>Impact on individuals:</u> This measure will affect operators of diesel fuelled private pleasure craft who currently use red diesel for non-propulsion use on board and for propulsion. To ensure that red diesel is no longer used for propulsion, this measure will prohibit the use of red diesel unless the craft has a separate fuel tank. Existing exceptions where the diesel is used exclusively for non-propulsion uses on board or the craft is residential but occasionally moves short distances to another permanent mooring will continue. Commercial craft and private pleasure craft that has no ability for propulsion, such as a permanently moored houseboat, will also be allowed to continue to use red diesel.</p> <p>Costs of installing a separate tank (one for on-board non-propulsion use which could contain red diesel and another for white diesel used for propulsion) are estimated by representative bodies for pleasure craft at around £500. However, many craft will not have the space for a separate tank and associated other equipment.</p> <p>As a result of this measure, operators of diesel powered private pleasure craft with only one tank will have to use full duty paid diesel</p>																														

	<p>(currently 57.95p per litre) for on-board non-propulsion use instead of the current rate of 11.14p per litre for rebated fuel they currently use. The increased amount they will pay due to the duty difference will depend on the amount they use. Private pleasure craft users with one tank will also in future pay the standard VAT rate on all their fuel because they will be using white diesel instead of red diesel which has a reduced rate of VAT.</p> <p>One consequence of this measure may be that marinas, ports and inland waterway refuelling stations may opt to supply only white diesel making it difficult for commercial craft to refuel with red diesel (which they will still be legally entitled to do).</p> <p><u>Impact on households and families:</u> There could be an impact on family formation, stability or breakdown given the expected increase in Fuel Duty and VAT paid for non-propulsion use on board. Individuals may now have less disposable income, which could affect their lifestyle. However, this will depend entirely on their amount of fuel usage.</p>																																																																														
Equalities impact	<p>An Examination of Watersports Participation Survey 2017 (prepared by Arkenford on behalf of the Royal Yachting Association, the Royal National Lifeboat Institute, British Marine, Maritime & Coastguard Agency, British Canoeing and Centre for Environment, Fisheries and Aquaculture Science) gives no reason to believe that any group will be particularly impacted.</p> <p><u>Detail</u></p> <p>Approximately 4 million UK adults took part in a boating activity in 2017. All percentages are of the UK population as a whole.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <thead> <tr> <th style="text-align: left;">Participation by age</th> <th style="text-align: center;">16-34 %</th> <th style="text-align: center;">35-54 %</th> <th style="text-align: center;">55 + %</th> </tr> </thead> <tbody> <tr><td>Yacht Cruising</td><td style="text-align: center;">1</td><td style="text-align: center;">1</td><td style="text-align: center;">1</td></tr> <tr><td>Power Boating</td><td style="text-align: center;">1</td><td style="text-align: center;">1</td><td style="text-align: center;">0</td></tr> <tr><td>Motor Boating</td><td style="text-align: center;">1</td><td style="text-align: center;">1</td><td style="text-align: center;">1</td></tr> <tr><td>Canal Boating</td><td style="text-align: center;">1</td><td style="text-align: center;">1</td><td style="text-align: center;">1</td></tr> <tr><td>Sea Angling (Rental)</td><td style="text-align: center;">1</td><td style="text-align: center;">1</td><td style="text-align: center;">0</td></tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <thead> <tr> <th style="text-align: left;">Participation by socio-economic group</th> <th style="text-align: center;">AB %</th> <th style="text-align: center;">C1 %</th> <th style="text-align: center;">C2DE %</th> </tr> </thead> <tbody> <tr><td>Yacht Cruising</td><td style="text-align: center;">2</td><td style="text-align: center;">1</td><td style="text-align: center;">0</td></tr> <tr><td>Power Boating</td><td style="text-align: center;">1</td><td style="text-align: center;">1</td><td style="text-align: center;">0</td></tr> <tr><td>Motor Boating</td><td style="text-align: center;">2</td><td style="text-align: center;">2</td><td style="text-align: center;">1</td></tr> <tr><td>Canal Boating</td><td style="text-align: center;">1</td><td style="text-align: center;">1</td><td style="text-align: center;">0</td></tr> <tr><td>Sea Angling (Rental)</td><td style="text-align: center;">1</td><td style="text-align: center;">0</td><td style="text-align: center;">0</td></tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Participation by ethnicity</th> <th style="text-align: center;">White %</th> <th style="text-align: center;">Mixed %</th> <th style="text-align: center;">Asian %</th> <th style="text-align: center;">Black %</th> <th style="text-align: center;">Other %</th> </tr> </thead> <tbody> <tr><td>Yacht Cruising</td><td style="text-align: center;">0.9</td><td style="text-align: center;">1.0</td><td style="text-align: center;">0.4</td><td style="text-align: center;">0.2</td><td style="text-align: center;">0</td></tr> <tr><td>Power Boating</td><td style="text-align: center;">0.7</td><td style="text-align: center;">0</td><td style="text-align: center;">0.6</td><td style="text-align: center;">0.6</td><td style="text-align: center;">0</td></tr> <tr><td>Motor Boating</td><td style="text-align: center;">1.4</td><td style="text-align: center;">0</td><td style="text-align: center;">0.5</td><td style="text-align: center;">0.6</td><td style="text-align: center;">0</td></tr> <tr><td>Canal Boating</td><td style="text-align: center;">0.7</td><td style="text-align: center;">0</td><td style="text-align: center;">0.7</td><td style="text-align: center;">0.6</td><td style="text-align: center;">0</td></tr> </tbody> </table>	Participation by age	16-34 %	35-54 %	55 + %	Yacht Cruising	1	1	1	Power Boating	1	1	0	Motor Boating	1	1	1	Canal Boating	1	1	1	Sea Angling (Rental)	1	1	0	Participation by socio-economic group	AB %	C1 %	C2DE %	Yacht Cruising	2	1	0	Power Boating	1	1	0	Motor Boating	2	2	1	Canal Boating	1	1	0	Sea Angling (Rental)	1	0	0	Participation by ethnicity	White %	Mixed %	Asian %	Black %	Other %	Yacht Cruising	0.9	1.0	0.4	0.2	0	Power Boating	0.7	0	0.6	0.6	0	Motor Boating	1.4	0	0.5	0.6	0	Canal Boating	0.7	0	0.7	0.6	0
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	Participation by life stage	Student %	Single %	Couple %	Family %	Single parent %	Retired %
	Yacht Cruising	1.3	0.8	1.4	0.7	0.3	0.6
	Power Boating	1.3	0.8	0.8	0.6	1.1	0.1
	Motor Boating	1.6	0.8	1.7	1.4	1.4	0.8
	Canal Boating	1	0.7	0.8	0.6	0.3	0.5
	Sea Angling (Rental)	0.8	0.6	0.8	0.6	0.3	0.3
Customer costs impact	There is no impact on the customer cost reduction target.						
Impact on businesses and civil society organisations	<p><u>Suppliers of diesel to marinas, ports and inland waterway refuelling stations</u> Suppliers may be impacted if the policy change leads to their customers (operators of refuelling stations at marinas, ports and inland waterways) changing their fuel orders. For example, they may request higher or lower amounts of red and white diesel.</p> <p><u>Operators of refuelling stations at marinas, ports and inland waterways</u> Any operator selling controlled oils (including red diesel) will be part of the Registered Dealer in Controlled Oils (RDCO) scheme. Currently they require private pleasure craft to estimate the proportion of red diesel they will use for propulsion when they sell them the fuel. RDCOs are then required to collect the duty differential between white diesel and red diesel on this proportion of fuel and pass it on to HM Revenue & Customs (HMRC). This measure will end this scheme and therefore the operators of refuelling stations will no longer be required to do this. RDCOs will therefore see a reduction in their ongoing administrative burden.</p> <p>As private pleasure craft that refuel at refuelling stations will no longer be able to use red diesel for propulsion (unlike commercial craft using their stations) operators will need to consider whether to make both red and white diesel available at their refuelling stations which in many cases could involve significant infrastructure investment and disruption.</p> <p>One-off costs will include familiarisation with the new rules. There are not expected to be any additional ongoing costs.</p> <p><u>Commercial craft</u> The measure may impact on commercial craft (e.g. fishing boats and commercial cruisers) if in response to the implementation of this measure refuelling stations decide to sell only white diesel. These craft could find it difficult to find red diesel even though they will still be legally allowed to use this fuel. They would then have to refuel</p>						

	<p>with white diesel with a higher level of duty levied on it (currently 57.95p per litre instead of 11.14p per litre) and a higher VAT rate charged (standard instead of reduced rate).</p> <p>A key aim of this consultation document is to receive further evidence to assess the likely response of refuelling stations to this policy change. The responses should therefore help HMRC to assess the impact on businesses.</p> <p>It is not expected that this measure will impact on civil society organisations.</p>
<p>Operational impact (£m) – [HMRC or other]</p>	<p>There are no operational impacts for HMRC since RDCOs have administered the existing scheme on behalf of HMRC.</p>
<p>Other impacts, including other government department costs</p>	<p>Other impacts have been considered and none have been identified.</p>

5. Consultation questions

5.1 If you are a supplier of fuel to craft at ports, marinas or inland waterway refuelling stations, please answer questions 1) to 8) and 19).

5.2 If you supply fuel to ports, marinas or inland waterway refuelling stations please answer questions 1), 2) and 8).

5.3 If you are a user or owner of a diesel fuelled craft please answer questions 9) to 19).

5.4 All respondents should tell us about concerns they have about the impact of the proposals that is not covered by their answers to specific questions.

Questions for fuel suppliers

Q1) Approximately how many litres per year do you sell of the following:

- a. Red diesel;
- b. White diesel;
- c. Other fuel (please specify)?

Q2) How many fuel tanks of each type do you currently have? If you have more than one of any fuel type how easy would it be to convert an existing tank to a different type of diesel. Please provide details.

Q3) Will the requirement that private pleasure craft can only use white diesel to propel their craft make you decide to:

- a. stop selling either red or white diesel, or
- b. start selling either red or white diesel?

Please outline the reasons for your answer. We need as much evidence as possible to support your response. For example is your answer based on:

- the cost of selling white diesel (including one-off infrastructure costs) is outweighed by the profit you expect to generate
- the likely difficulty of accessing finance to pay for new infrastructure required to supply red/white diesel
- the difficulties you think you will encounter in gaining planning permission for the necessary changes to your site
- the number of private pleasure craft customers you serve being too small for it to be economically viable to supply both white and red diesel?

The list is not exhaustive and is indicative of possible issues that may influence your decision on what fuel to supply following the changes outlined in this consultation paper. HM Revenue & Customs recognises that your reasons may be commercially sensitive. You should carefully consider the confidentiality statement in chapter 6 to make sure you are content to include any commercially sensitive information in your answer.

- Q4) If you currently sell only red diesel and have indicated you intend to supply only white diesel, how long do you estimate it will take to run down your current red diesel fuel supply tanks (you will need to factor in the need to flush out your tank to remove traces of the fuel marker before refuelling with white diesel – please provide details of likely costs)?
- Q5) If you currently sell only white diesel and have indicated you intend to supply only red diesel, how long do you estimate it will take to run down your current white diesel fuel supply tanks?
- Q6) Do you envisage any problems with the proposed treatment of mixed use craft? Specifically do you envisage a problem requiring documentary proof of registration as a commercial craft before supplying red diesel?
- Q7) To help us analyse the likely impact of the proposed change it would be helpful to know:

Are you based on:

- A river (please specify which)
- A canal (please specify which)
- Inland lakes / broads (please specify which)
- The coast (please specify where)
- A depot away from these but deliver fuel to boats on demand (please specify where)?

Q8) What is your town/postcode?

5.5 Fuel suppliers should also answer question 19.

Questions for diesel fuelled craft users and owners

5.6 If you own more than one craft please answer the questions for each craft

- Q9) Where do you use your craft? If more than one type of location please estimate in percentage terms the amount of time per year your craft spends in these areas.
- A river (please specify which)
 - A canal (please specify which)
 - Inland lakes / broads (please specify which)
 - The coast (please specify where)
 - International (please give details)

Q10) What do you use your craft for? If more than one type of use please estimate in percentage terms the amount of time per year you use your craft for.

- Commercial only
- Private use only
- Predominantly commercial use with some private pleasure use
- Predominantly private pleasure use with some commercial use
- Permanently moored houseboat with occasional short distance propulsion by diesel motor to another mooring
- Fixed mooring, residential only (i.e. no propulsion)
- Continuous cruiser/boat without a home mooring

Q11) Where do you usually buy your diesel fuel? If more than one type of location please estimate in percentage terms the amount of time per year your craft uses these areas.

- Marina (please specify which)
- Port (please specify which)
- Delivered by supplier
- Other (please specify)

Q12) How much diesel do you purchase at any one time?

Q13) How often do you refuel your craft?

Q14) If the place where you currently buy fuel did not supply white diesel, where would you buy fuel from? What difficulties would you encounter?

Q15) Approximately how many litres of diesel fuel do you use in a typical year:

- for propulsion for private use
- for propulsion for commercial use
- for on-board non-propulsion use
- for other purposes (please specify)?

Q16) Are the purposes specified in question 15) fuelled from the same tank?
If "yes":

- a. Would it be possible to fit a separate fuel tank for non-propulsion purposes? If not, please outline your reasons;
- b. How costly would this be and how prohibitive would this be for you?
- c. How long typically would it take to run down your red diesel stock?

Q17) Do you foresee any problems with refuelling if you are required to use white diesel for propulsion e.g. areas where you would be concerned

that white diesel would be unavailable? Please provide details of the likely implications.

- Q18) If you use your craft for a mix of commercial and private pleasure use, how easy would it be to completely remove red diesel from your fuel tank after commercial use, before using white diesel for private pleasure use? Please provide details.

Penalties

- Q19) Do you agree with aligning penalties for misuse of red diesel in private pleasure craft with the current penalties for misuse of red diesel in road vehicles is appropriate? If not, what difficulties do you foresee?

6. The consultation process: how to respond

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

Responses should be sent by 9 September 2019, by e-mail to gary.satchell@hmrc.gov.uk or by post to:

Gary Satchell
Excise & Environmental Taxes Design Team
H & Customs
Room 3/36, 100 Parliament Street
London
SW1A 2BQ

Telephone enquiries to Gary Satchell on 03000 585802 (from a text phone prefix this number with 18001) Monday to Thursday.

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue & Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation

Your Data

The data

We will process the following personal data:

- Name
- Email address
- Postal address
- Phone number
- Job title

Purpose

The purpose(s) for which we are processing your personal data is: Implementation of the Court of Justice of the European Union judgment on fuel used in private pleasure craft.

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue & Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue & Customs
7th Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
advice.dpa@hmrc.gsi.gov.uk

Consultation Principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: <mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk>

Please do not send responses to the consultation to this address.

Annex A: Relevant current legislation

Hydrocarbon Oil Duties Act 1979

- Defines “Light Oil”, “Heavy Oil” and “Gas Oil” amongst others [section 1]
- Creates an excise duty of 57.95 pence per litre for Heavy Oil [section 6]
- Creates a rebated rate for heavy oil of 11.14 pence per litre [section 11]
- Dis-applies the rebate where the fuel is used as road fuel [section 12]
- Defines “Private Pleasure Craft” by reference to EU Directive 2003/96 (see below) [section 14E(8)]
- Outlines procedures to repay the rebate where fuel is used for propelling private pleasure craft [section 14E]
- Provides for penalties where section 14E is contravened [section 14F]
- Restricts the use of rebated biodiesel and bioblend so that it cannot be used to propel private pleasure craft unless the specified amount in section 14C(4) is paid [section 14C]
- Provides for penalties where rebated biodiesel or bioblend is misused [section 14D]

Hydrocarbon Oil and Bioblend (Private Pleasure Flying and Private Pleasure Craft) (Payment of Rebate Etc.) Regulations 2008 [SI 2008/2599]

- Regulation 7: Declaration to be given that fuel is to be used for propelling a private pleasure craft is to be given in such form as the Commissioners may direct.
- Regulation 8 covers the process for repaying the rebate.
- Regulation 9 introduces Regulation 10 which deals with mixtures of fuel where some use is as private pleasure craft and some use is other than as a private pleasure craft.

Notice 554: Contains Commissioners’ directions on process to be followed, having force of law (subject to requirements of primary/secondary legislation).

Notice 75: Contains references to the legislative provisions on penalties for misuse of rebated fuel (red diesel) in road vehicles.

Directive 2003/96 Article 14(1)(c) reproduced here as it is directly referred to in Hydrocarbon Oil Duties Act 1979 S14E(8):

For the purposes of this directive “**private pleasure craft**” shall mean any craft used by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.

Annex B: Powers of detection, offences and penalties for misuse of rebated diesel

Currently, if you	What you may be liable to	Situation after introduction of changes*
1. Take in oil (other than fully duty paid fuel) for use as fuel in a road vehicle.	A £250 civil penalty under section 9 of the Finance Act 1994.	1. Contravention and penalties to be extended to cover fuel used to propel private pleasure craft.
2. Misuse oil (other than fully duty paid fuel) for use as fuel in a road vehicle.		2. Contravention and penalties to be extended to cover fuel used to propel private pleasure craft.
3. Supply oil (other than fully duty paid fuel) for use as fuel in a road vehicle.		3. Contravention and penalties to be extended to cover fuel used to propel private pleasure craft.
4. Are not entitled to use red diesel and you mix any rebated or duty free oil with any oil on which no rebate has been allowed.	A £250 civil penalty under section 9 of the Finance Act 1994. If your conduct involves dishonesty, a penalty of up to 100% of the duty evaded may be imposed.	4. Contravention and penalties to be extended to cover fuel used to propel private pleasure craft.
5. Fail to provide, or to allow an HM Revenue & Customs (HMRC) officer to obtain, a sample of fuel.	Your vehicle and/or oil may be seized, or detained and we may issue an Excise wrongdoing penalty under Schedule 41 of Finance Act 2008. Depending on the circumstances we may also raise an assessment, requiring you to pay additional fuel duty for all of your vehicles, for a period going back up to four years.	5. To be extended to allow HMRC officers to obtain a fuel sample from private pleasure and commercial craft.

Currently, if you	What you may be liable to	Situation after introduction of changes*
6. Remove any designated chemical marker of dye from any fuel. Fuel used by private pleasure craft already covered.	An excise wrongdoing penalty under Schedule 41 of Finance Act 2008. The oil and any associated containers and equipment may be seized and forfeited.	6. No change.
7. Add any substance to the fuel to prevent the chemical marker from being identified. Fuel used by private pleasure craft already covered.		7. No change.
8. Make a false or inaccurate declaration which results in a loss of tax to HMRC. Currently applied to RDCOs that supply fuel to private pleasure craft and private pleasure craft users that purchase red diesel from an RDCO.	An inaccuracy penalty under Schedule 24 of Finance Act 2007. Prosecution and/or seizure of goods under section 167 of the Customs and Excise Management Act 1979. If you think you have made a mistake in your declaration you should tell us immediately. We may then reduce or waive the penalty.	8. The requirement for private pleasure craft users to sign a declaration outlining the amount of red diesel intended for propulsion and the amount for non-propulsion use will be removed. Therefore this penalty will no longer apply

***subject to any adjustment period that might be needed**



REPORT TO: HARBOUR BOARD

Date: 13/08/19

TOPIC: APPOINTMENT OF INDEPENDENT MEMBERS TO THE HARBOUR BOARD

REPORT BY: HARBOUR MASTER

1 INTRODUCTION

- 1.1 This report details the selection process for the appointment of two Independent Members to the Harbour Board.

2 RECOMMENDATION

- 2.1 That Mr Bert Gear be appointed as an Independent Member on the Harbour Board for a four year period until 25th September 2023.
- 2.2 That Mr Tim Gibbs be appointed as an Independent Member on the Harbour Board for a four year period with effect from 25th November 2019 until 24th November 2023.

3 REASONS FOR RECOMMENDATIONS

- 3.1 The Members of the Interview Panel, (the Panel), decided that following the interview process Mr Bert Gear had demonstrated the required attributes, and, therefore, recommended Mr Bert Gear to be co-opted to serve on the Harbour Board.
- 3.2 The Members of the Panel, decided that following the interview process, Mr Tim Gibbs had demonstrated the required attributes, and, therefore, recommended Mr Tim Gibbs to be co-opted to serve on the Harbour Board.

4 REPORT

- 4.1 An Independent Member vacancy arose on the Harbour Board due to Capt. John Joint standing down as a member for personal reasons on 13th February 2019.
- 4.2 A second Independent Member vacancy arose on the Harbour Board due to Mr Alan Kift nearing the end of his third term on 24th November 2019, and under Article 18 Section 3, further service could only be achieved following a competitive appointments process.

- 4.3 The positions were advertised in the local press and on North Devon Council's website.
- 4.4 The Panel agreed to interview the three applicants who had applied to serve on the Board as an Independent Member; the three candidates were interviewed each having met the essential criteria of the selection criteria.
- 4.5 The interview panel consisted of Captain Georgina Carlo-Paat and Councillor Geoff Fowler, Chairman of the Harbour Board.
- 4.6 Following the interviews of each of the candidates the Panel considered that Mr Bert Gear and Mr Tim Gibbs were the preferred candidates to be recommended to Council for appointment.
- 4.7 The selection process mirrored that previously undertaken for the appointment of Independent and Parish Council appointments to the Ethics Committee and the Council's Officers' appointments.
- 4.8 The panel would like to recognise Mr Alan Kift's valuable service to the board by recommending that in due course Mr Alan Kift is given the opportunity to sit on any workshop the board convenes for the long term development of the Harbour.

5 RESOURCE IMPLICATIONS

- 5.1 There are no resource implications associated with this report.

6 CONSTITUTIONAL CONTEXT

Article or Appendix and paragraph	Referred or delegated power?
Part 3, Paragraph 5	Referred

7 STATEMENT OF CONFIDENTIALITY

- 7.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

8 BACKGROUND PAPERS

- 8.1 The following background papers were used in the preparation of this report:
- Application forms and evaluation forms that also contained personal information relating to an individual which are not for publication as they contained material personal to that applicant.

The background papers are available for inspection and kept by the author of the report.

9 STATEMENT OF INTERNAL ADVICE

- 9.1 The author (below) confirms that advice has been taken from all appropriate Councillors and officers.

Agenda Item 14

Author: Captain Georgina Carlo-Paat, Harbour Master

Date: 13/08/19

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