



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

<b>Subject of this consultation:</b>	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.
<b>Scope of this consultation:</b>	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.
<b>Who should read this:</b>	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).
<b>Duration:</b>	8 weeks – closing date 9 September 2019.
<b>Lead official:</b>	Gary Satchell, Excise & Environmental Taxes Policy Design Team
<b>How to respond or enquire about this consultation:</b>	Enquiries and responses should be emailed to <a href="mailto:gary.satchell@hmrc.gov.uk">gary.satchell@hmrc.gov.uk</a> 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
<b>Additional ways to be involved:</b>	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.
<b>After the consultation:</b>	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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# 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) long<sup>1</sup>. 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.

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<sup>1</sup> 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](mailto: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 554<sup>2</sup>.

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

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<sup>2</sup> <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 75<sup>3</sup> 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

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<sup>3</sup> <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**

<b>Use of private pleasure craft (with one fuel tank for propulsion and non-propulsion uses)</b>	<b>Current refuelling policy</b>	<b>Proposed refuelling policy</b>
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

<b>Exchequer impact (£m)</b>	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	Total
	-	-	neg	neg	neg	neg	neg
	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.						
<b>Funding for measures</b>	The latest cost estimates for implementing this measure are as follows:						
	<b>18/19</b>	<b>19/20</b>	<b>20/21</b>	<b>21/22</b>	<b>22/23</b>	<b>23/24</b>	<b>Total</b>
RDEL (£m)	Nil	Nil	Nil	Nil	Nil	Nil	<b>Nil</b>
CDEL (£m)	Nil	Nil	Nil	Nil	Nil	Nil	<b>Nil</b>
<b>Economic impact</b>	This measure is not expected to have a significant economic impact.						
<b>Impact on individuals, households and families</b>	<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>						

(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.

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).

Impact on households and families: 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.

**Equalities impact**

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.

Detail

Approximately 4 million UK adults took part in a boating activity in 2017. All percentages are of the UK population as a whole.

<b>Participation by age</b>	<b>16-34 %</b>	<b>35-54 %</b>	<b>55 + %</b>
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

<b>Participation by socio-economic group</b>	<b>AB %</b>	<b>C1 %</b>	<b>C2DE %</b>
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

<b>Participation by ethnicity</b>	<b>White %</b>	<b>Mixed %</b>	<b>Asian %</b>	<b>Black %</b>	<b>Other %</b>
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

	Sea Angling (Rental)	0.6	1	0.2	0.2	0	
	<b>Participation by life stage</b>	<b>Student %</b>	<b>Single %</b>	<b>Couple %</b>	<b>Family %</b>	<b>Single parent %</b>	<b>Retired %</b>
	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
<b>Customer costs impact</b>	There is no impact on the customer cost reduction target.						
<b>Impact on businesses and civil society organisations</b>	<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 &amp; 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>
<b>Operational impact (£m) – [HMRC or other]</b>	There are no operational impacts for HMRC since RDCOs have administered the existing scheme on behalf of HMRC.
<b>Other impacts, including other government department costs</b>	Other impacts have been considered and none have been identified.



## 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](mailto: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](mailto: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](mailto: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.

<b>Currently, if you</b>	<b>What you may be liable to</b>	<b>Situation after introduction of changes*</b>
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**