

IWA BRIEFING NOTE

RED DIESEL TAXATION

On 17th October 2018 it was announced that the Court of Justice of the European Commission had found against the UK Government over the matter of the continued use of red diesel by leisure boaters in the United Kingdom.

The Inland Waterways Association will continue to work in partnership with British Marine and the Royal Yachting Association to campaign for the impact of this judgement on boat owners and boatyard operators to be minimised.

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BACKGROUND

Under current EU rules on fiscal marking for fuels, fuel that can benefit from a reduced tax rate has to be marked by coloured dye. Commercial craft are allowed to benefit from fuel subject to a lower tax rate but private boats must use fuel subject to a standard rate.

Historically, boat owners were able to purchase and use lower-taxed diesel marked with a red dye, otherwise used by the agricultural and construction industries, for pleasure boating. This changed in 2008 when a UK derogation from the Energy Products Directive (which permitted the UK to continue to levy a reduced rate of duty on motor fuel to be used for propulsion in private pleasure craft) ended.

At that time IWA, Royal Yachting Association (RYA) and British Marine Federation (now British Marine) worked closely with Her Majesty’s Revenue & Customs (HMRC) to achieve a sensible arrangement of self declaration, whereby boaters are able to decide at the point of purchase what proportion of their diesel consumption is used solely for propulsion, and what proportion is used for heating and lighting.

IWA has been aware of this latest threat since 2011 when the European Commission first threatened to open infringement proceedings against the UK Government claiming the UK was not adhering to EU directives on fiscal marketing, designed to prevent the improper use of certain petroleum products. At that time Justine Greening, then Economic Secretary to the Treasury replied to IWA that the UK Government continued to share IWA's view that the procedures operated in the UK comply with Directives, and responded to the Commission accordingly.



Advice was issued by HMRC in April 2012 concerning the use of red diesel on the continent and possible action by other countries against any visiting vessels found with marked red diesel in their fuel tanks. At that time HMRC stated that there would be no change to the arrangements for the use of red diesel on inland waters in the UK provided the correct amount of duty has been paid.

Red diesel is often preferred by recreational boaters because many believe it to be free of the biofuels (fatty acid methyl esters - FAME) included in road diesel. FAME may cause damage to seals and other components in older diesel engines but, in reality, there is no guarantee that red-marked fuel will not contain FAME.

In May 2013 the United Kingdom was formally requested to amend its legislation to ensure that private pleasure boats can no longer buy lower taxed fuel intended for commercial boats. On 24 July 2013, HMRC indicated that the UK Government intended to challenge this, a decision welcomed by IWA.

THE CURRENT THREAT

The European Commission referred the matter to the European Court of Justice in July 2014, stating that the UK was "not properly applying" European excise rules.

The European Commission took action pursuant to Article 258 of the Treaty on the Functioning of the European Union against Ireland (Case 504/17) and the United Kingdom (Case 503/17) as it considered that "by allowing the use of marked fuel for the purposes of propelling private pleasure craft, these Members States had failed to fulfil their obligations under Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene".

The Court of Justice of the European Commission announced its judgement on 17th October 2018, finding against the UK Government.

This judgement may mean the end of the use of red diesel for any leisure boating, with boatyards and fuel suppliers having to supply unmarked (white) diesel. Whilst red diesel could continue to be used for heating, it would have to be in a separate tank, and there would be no dispensation for any proportion of fuel used by the engine for generating heat and light. Commercially operated boats would still be able to purchase and use red diesel, but this would require fuel suppliers and boatyards to have two separate tanks (and pumps) for the different fuels.

IWA is concerned at the increased costs that will be faced by both boat owners and boatyard operators if this change is implemented. Whilst accepting that any fuel used solely for propulsion should be subject to the higher rate of tax, IWA considers that it is unfair for boat owners to have to purchase fully taxed white diesel for heating and cooking. IWA is also concerned at the costs to boatyards and other fuel suppliers in

having to install a new or second tank and pump in order to be able to supply white diesel. IWA considers that it is not practical for most boats that use the inland waterways to have two tanks – one for red diesel and one for white; that inappropriate modifications would raise safety concerns; and that many diesel suppliers would simply not supply both red and white diesel.

IWA will continue to work in partnership with RYA and British Marine over this issue, and will make representations to the UK Government to ask them to consider, in their response to the judgement, the significant impact on recreational boaters and the leisure marine industry.

This briefing note was updated on 31st October 2018