

## **CPA guidance and information on forthcoming changes to the use of red diesel and rebated fuels from 1<sup>st</sup> April 2022**

**3<sup>rd</sup> Edition – April 2022**

**The guidance given in this document is accurate to the best of our knowledge and is based on official published HMRC guidance, and responses from HMRC to questions we have asked. We would urge you to refer to the official HMRC guidance for further clarity**

### **Main points to note and actions**

1. Plant-hire companies who operate plant and machinery in construction that uses red diesel must fill tanks with white diesel or duty paid biofuels (I.e., HVO) from 1<sup>st</sup> April 2022
2. Companies can continue to operate plant with any red diesel that is already in a vehicle or machine's engine from 1<sup>st</sup> April, but they will not be allowed to refill fuel-tanks with red diesel from this date onwards
3. Red diesel can continue to be used by operators for plant and machinery that is hired out to clients if it is being used solely for agricultural or forestry purposes, but the fuel tanks must be drained and replaced with white diesel ahead of the machinery being hired out to a construction client
4. Operators are not expected to flush out fuel-tanks of red diesel in advance of 1<sup>st</sup> April, but they will be expected to make sure that any excess fuel they have in storage tanks is disposed of properly. Suppliers can sell or give their excess fuel to someone still entitled to use it or sell it to an oil dealer or dispose of it through waste oil or disposal companies
5. We advise CPA members to work closely with their existing fuel suppliers to ensure both sides are aware of the changes and the procedures to follow. Fuel suppliers are being contacted by HMRC to ensure they are following the new regulations
6. Following the introduction of the new regulations, we urge members to keep records /receipts of orders of deliveries and supplies of red diesel, along with records for when and how much red diesel was delivered and when it was added to engines. In addition, we advise members to make sure they have full records for what activity the machinery and plant has been hired out for – I.e., is it being used for construction, agriculture, or forestry purposes
7. We advise members to review existing security arrangements, whether in depot sites or working with clients when equipment is on site, to deter the theft of white diesel
8. Raise awareness amongst staff and clients of the changes that have come into effect and what procedures they must now follow in line with the new regulations
9. The new rules apply to any type of vehicle that currently runs on red diesel or rebated biodiesels – including what is termed a 'special vehicle'. If the machine is working in a construction related activity, red diesel cannot be put the fuel tank from 1<sup>st</sup> April.

## **Introduction – what is changing with the status of red diesel and rebated fuels from 1<sup>st</sup> April – and why?**

Construction companies who use red diesel to power their construction plant machinery are no longer legally, be allowed to. From Friday 1<sup>st</sup> April, companies operating construction machinery and equipment, are no longer allowed to use rebated red diesel or rebated biofuels (i.e., HVO). While companies will still be able to use biofuels such as HVO, they are now required to pay the full amount of duty on the fuel. Those who can continue to run on red diesel, i.e., farmers using plant and machinery for agricultural purposes, must run their equipment on white diesel for construction related purposes from April 1<sup>st</sup>.

The government wants to lower the UK's carbon footprint – this is part of the longer-term plan for the UK to be a net-zero economy by the middle part of the century. Policymakers believe scrapping the rebate for red diesel and making the construction sector switch to white diesel, will act as an incentive in moving the industry towards alternative power sources such as electric or hydrogen powered plant.

The CPA has been involved throughout the consultation process since this policy was first announced in Budget 2020. We have ongoing concerns about the impact raised costs will have on members, as well as the heightened risk of theft and security concerns with the switch to white diesel.

This guide is designed to help the plant-hire sector understand the changes that have now been introduced. We urge members to read them and make sure that you, your colleagues, and your clients and customers, are aware of what these changes mean and how they affect your business and day to day operations.

Over the coming weeks as the new system takes effect the CPA will be working closely with HMRC to make sure the switch to white diesel does not impact on their ability to meet the needs and demands of their customers. We remain committed to working with members, stakeholders, and government in ensuring the new policy is implemented as smoothly as possible.

### **Existing stocks of red diesel from 1<sup>st</sup> April**

Unless you are using red diesel for allowed activities such as agricultural or forestry work, then HMRC advise companies to:

- Sell or pass on the red diesel to someone who is allowed to use it
- Sell or give the red diesel to any RDCO
- Dispose of the red diesel via an approved waste oil recycling or disposal company.

Companies are asked to retain records of how and when and where excess red diesel was disposed of, or who it was sold to. This can be done without getting approval from HMRC.

### **What happens from the 1<sup>st</sup> April onwards?**

From 1<sup>st</sup> April onwards, when refuelling or topping up fuel tanks, if it is being used for construction related purposes, vehicles and machinery **must only be filled with white diesel** or duty paid biodiesel fuels. Construction plant-hire companies and construction-based clients and customers **cannot** add red diesel to fuel tanks or fuel storage tanks based on construction sites, after the 31<sup>st</sup> March.

### **Moving engines from red to white diesel**

HMRC accept that vehicles will be using red diesel on construction sites in the weeks after the 1<sup>st</sup> April, however, as tanks run low, companies and clients will be required to replace the

used red diesel, with white diesel, or duty paid biodiesel. HMRC are working on the basis that fuel colourisation within tanks and the fuel itself will gradually change as the tanks are re-filled with white diesel or equivalent, where the plant is consistently worked in construction operations.

HMRC recognise that there will be legitimate cases where traces of the red diesel marker may get into a machine or vehicle if they have been fuelled from a tank that had previously been storing rebated fuels in it and is now being refilled with white diesel.

#### **HMRC are taking a pragmatic approach to enforcing the new rules**

HMRC guidance states they will take a pragmatic and realistic approach to enforcement of the new rules. If you can demonstrate to HMRC that you have been refilling with white diesel only from 1<sup>st</sup> April then they will not take any action against you if they find traces of red diesel marker in the engine. You should retain invoices or receipts that can show you bought fully paid diesel or biodiesel after 1 April to help them.

HMRC have repeatedly stressed their desire to work with the plant-hire community to ensure compliance, rather than zealously enforcing legislation due to an oversight or mistake by a company making this switch to their day-to-day business operations.

In discussions with HMRC, they have stated that they will not publish numbers on specific 'acceptable' levels of red diesel traces as it is illegal to have red diesel within the tank of a vehicle/machine if using it for a non-permitted purpose. If members are challenged about the red diesel marker traces, then it is important they are able to provide proof of how that might have got there - e.g., show inspectors that the tank did have rebated fuels before 1<sup>st</sup> April in it, but is now being refilled with white diesel. In short, if you keep records to show how marker traces may have got into an engine/machine as a result of work done to transition to the new rules, then HMRC have told us that they are unlikely to take action against you.

#### **What about machinery that can be hired out for agricultural purposes?**

HMRC guidance states that if the machine is being hired out for agricultural purposes, then it can **legitimately use red diesel** for the duration of the hire. At the end of the hire, once the machine has been returned to the plant-hire company, unless it is being hired out to another agricultural user, **then the fuel tank must be drained of red diesel** and replaced with either white diesel or duty paid biodiesel.

In our discussions with HMRC, they accept that even if the fuel tank is fully drained, there will be traces of red diesel within the fuel tank. If a company is challenged on why there are trace elements of red in what is meant to be white diesel, then we advise members to make sure they keep all records of hire contracts for machinery, showing when and for what purpose the machinery was being sent out, and what type of fuel it was allowed to use.

We acknowledge this is time consuming and there is an operational impact of switching different types of fuels between machinery for different hires. Each company operates differently. If agricultural hires or forestry work forms a core part of a companies' client base, then it might be worth considering having separate machinery for this type of work, thus saving time and effort on having to drain fuel tanks, however, we appreciate this is not a realistic alternative for many companies.

#### **The current HMRC guidance includes examples of special vehicles – does that mean I can continue to use red diesel in the types listed?**

In short, no. Many members have asked us this question but, in the guidance, a special vehicle has been listed by HMRC as an example of machinery that currently runs on red diesel. From the 1<sup>st</sup> April, these vehicles, if they are working in construction related activity,

cannot have red diesel added to their fuel tanks. Any fuel that is added after this date must either be white diesel or fully duty paid biodiesel.

### **Why is there no rebate for HVO and other biodiesels?**

The development and use of HVO and other biodiesels as alternative fuels in construction plant machinery has been well documented in recent months. Seen by many users and suppliers as an environmentally friendly alternative to using fossil fuels such as red and white diesel, its popularity has increased. Yet from 1<sup>st</sup> April, users will have to pay the full duty on these fuels – they will be treated the same as traditional diesel fuels. As an example, HVO is a liquid hydrocarbon under HMRC excise purposes, it is classified as a heavy oil, and is therefore treated the same as diesel.

**Please note:** Owners may wish to confirm with their plant and machine suppliers to ensure that if alternative fuels are used, this will not affect the engine's performance, or the machine's warranty.

### **Security and storage of white diesel**

We urge members to review their current security arrangements for their depot(s), as well as for plant and machinery out on hire on a customer's site, together with any fuel stores. This review could for example include, CCTV, fuel tanks alarms, and restricted access through enhanced fencing, and up-to-date records.

Although the CPA have repeatedly made the authorities aware of the threat to industry, it is not HMRC's responsibility to safeguard against fuel theft or combat this type of criminal activity, this remains the responsibility of the police.

### **Working with customers and colleagues on raising awareness of the forthcoming changes**

We urge members to work closely within their own company and with their customers and clients to ensure they are fully aware of the changes to come and what to expect from 1<sup>st</sup> April.

This can extend to:

- Putting stickers on or near fuel tanks on plant and machinery, reminding users to put white diesel (or equivalent) into fuel tanks from 1<sup>st</sup> April
- Posters up in welfare facilities and around depots and construction sites with details of the new regulations to help employees understand the changes
- Emailing this guidance and links to the official HMRC guidance on the changes to key members within your organisation, and to clients
- Speaking with your current fuel suppliers to make sure both parties are aware of the changes when they apply and what to expect from April onwards.

Members should keep all receipts and records of when supplies of red diesel are ordered and delivered.

The new rules apply to anyone using red diesel in plant and machinery on construction sites. While the plant-hire industry will be impacted the most, the new regulations extend to contractors and operators of their own equipment – all must make the switch to white diesel from 1<sup>st</sup> April. **Please note** - renewable fuels such as HVO are currently treated no differently from fossil fuels such as conventional diesel – only fuel on which full duty has been paid can be used, regardless of origin

When machinery is out on hire and on sites where there are existing fuel storage facilities, we recommend ahead of the April deadline, that the plant-hire company makes it clear that from 1<sup>st</sup> April, machinery should only be filled with white diesel. While we expect contractors

to be working with their own fuel suppliers to ensure they are using up their stocks of red diesel and are preparing for the change to white diesel, it is best to plan and make sure that everyone across the hire chain knows and understands these changes.

We recommend that at the start of the hire and when the machinery is returned, the plant-hire company is able to provide evidence towards what type and how much fuel was in the machine when it went out, and to check what type and how much fuel is within the tank when it is returned. We advise members to refer to Clause 28 in the CPA Model Conditions, which states the customer will be liable for damages or losses if the wrong fuel is added to the machinery.

Failure to check on what fuel has been added, may well undermine the new regulations and could result in potential action from HMRC.

## **Other points to note**

### **Using dye in white diesel**

Many members have asked if it is possible to add a dye, such as a blue marker, into fuel tanks, to differentiate from white and act as a deterrent to thieves looking to steal white diesel. There is nothing in the legislation to suggest you cannot do this, however we would recommend making sure that you keep records of how much and when these dyes are being added to the fuel tanks.

### **Using red diesel in plant-hire depots**

Companies **will not** be able to use red diesel in forklift trucks or other support vehicles in depots or yards. This comes back to the point of what the vehicle is being used for – by extension, if it is part of the logistical support for vehicles and machinery involved in construction, and had been run on red diesel, then from 1<sup>st</sup> April, it must follow the new regulations.

### **Questions - Accepted uses of red diesel from 1<sup>st</sup> April**

**Q** - If a machine was supplied to the Forestry Commission, and it was to be used for road maintenance work inside a forest (where timber was being cut), can the machine be run on red or white diesel?

**A** - Forestry work is an accepted use so use of rebated fuels in vehicles and machines doing this work are allowed to use rebated fuels. Forestry is defined as the growing or harvesting of timber or other forestry products. If you are creating or maintaining a road to get access to the forest, then that qualifies for rebated fuel (red diesel) usage for any machine supplied for that activity.

**Q** - Using the above example, but on this occasion the machine was helping with the felling of trees, would the machine run on red or white diesel?

**A** - Felling trees is harvesting them so use of rebated fuel accepted

**Q** - In the event that a machine was being used in both operations within the forest – road maintenance and tree felling – which fuel would have to be used?

**A** – If the maintenance work is to assist forestry, then the use of rebated fuel (red diesel) is permitted

**Q** – What about those members who hire out machinery to landscape gardeners and horticulture engineers. Some are under the impression they can continue to use red diesel post 1<sup>st</sup> April – will they have to switch to white?

**A** - HMRC applies the following definitions of agriculture, horticulture and forestry:

- agriculture – the science and art of cultivating the soil, growing and gathering in crops, and rearing of livestock
- horticulture – the science and art of cultivating or managing gardens, including the growing of flowers, fruits and vegetables
- forestry – the science and art of forming and cultivating forests and the management of growing timber.

Maintaining the landscape is not horticulture - a plants (garden) nursery is an example of a horticulture business

### **Use of red diesel outside of the UK**

In other countries or jurisdictions outside of the UK, such as EU member states, the use of red diesel will still be legal in some construction vehicles. If the fuel tank is refilled outside of the UK with red diesel, companies will still be able to use red diesel in the UK, provided they are able to prove to HMRC, that the vehicle was filled lawfully outside of the UK.

We recommend members check directly in whatever EU state or jurisdiction they are operating in, to ensure they are able to use red diesel in their construction plant.

Please note, both Northern Ireland and the Isle of Man will be following the same rules as the rest of the UK on the use of red diesel. If operating in the Channel Islands, again, it is worth checking with the local jurisdiction to see if you can continue to use red diesel.

### **Useful links and email addresses**

- For companies uncertain whether they will use up existing stocks of red diesel in fuel tanks, please contact [oils.policymail@hmrc.gov.uk](mailto:oils.policymail@hmrc.gov.uk) for further information
- For queries on the existing HMRC guidance and procedures to follow, contact [rediesellentitlement@hmrc.gov.uk](mailto:rediesellentitlement@hmrc.gov.uk)
- Official HMRC red diesel guidance - [Using rebated fuels in vehicles and machines \(Excise Notice 75\) from 1 April 2022 - GOV.UK \(www.gov.uk\)](#)
- To view the CPA / HMRC red diesel webinar from February 2022, please go to: [CPA Webinar Programme | Construction Plant-hire Association](#)

### **CPA Disclaimer**

This document has been put together in partnership with HMRC, for CPA members and is correct at the time of writing. We recommend that users of red diesel who will be switching to white diesel, should refer directly to the official HMRC guidance for wider points of clarification and reference.

We will be updating this document as and when the official HMRC guidance is updated accordingly.

**CPA – April 2022**