

Red Alert

Confusion surrounds the conditions of use for operators fuelling vehicles and turf machinery with red diesel. Ed Philips seeks to clear the undergrowth

'Red' diesel has long been employed in the landscaping, local authority, horticulture and farming sectors as a far cheaper alternative to its 'white' counterpart.

Yet vehicles and machinery operators remain confused about the conditions for its use. What is crystal clear however is that penalties, even vehicle seizures, can result from illegally deploying the fluid in tractors, utility vehicles and turf machinery, for example.

Publication of a new order in 2006 amending the list of vehicles allowed to use rebated fuel (red diesel) has only served to muddy the waters further it seems, notably over its definition of tractors qualifying as exempt vehicles.

In a bid to clarify confusion for end users, H M Revenue and Customs – the government agency charged with policing red diesel – and the DVLA jointly issued a Memorandum of Agreement on 10 January 2008, which defines permitted and prohibited use of the fuel in “agriculture, horticulture and forestry”.

To add clarity, GI answers questions about the dos and don'ts of the fuel.

What is red diesel?

It's a rebated fuel, which, compared to regular 'white' diesel, has a far lower tax charged on it. The fuel is dyed red to discourage general use and to allow the authorities to spot suspected illegal use.

An invisible chemical tracer is added so that even if the dye was removed, tests on a fuel sample would reveal it to be non-road legal.

Legislation was first introduced in 1935 to allow vehicle concessions for red diesel but the passing of the Hydrocarbons Oil Duties Act 1979, Schedule 1, updated the law to include tractors.

Who can and cannot use it?

The memorandum of agreement states that red diesel is allowed to be used in “farming the land, agriculture, horticulture and forestry” but is barred from use in the “breeding, rearing or keeping of any creature relating to sport or recreation, dealing in agricultural,

horticultural or forestry products, landscaping, or the maintenance of recreational facilities”.

If a vehicle requires a tax disc, it also requires white, not red, diesel.

When, where and in which vehicles can red diesel be deployed?

Three categories of legal operation apply to the amenity sector – “unlicensed vehicles, mowing machines and tractors”. An unlicensed vehicle is one not used on public roads and untaxed.

However, if a vehicle has become untaxed since 31 January 1998, it will require a Statutory Off-Road Notification (SORN).

Mowers – whether pedestrian or ride-on – must be a “complete vehicle” to use the fuel. The “machinery” (engine) must be built into the vehicle for it to qualify under this category.

A tractor with mowing equipment attached to it for example would not qualify in the mowing category as it is not purpose-built – an exclusion also applying to any type of utility vehicle with removable mowing machinery attached to it.

Conversely, a vehicle consisting of a Land Rover chassis for example, with permanently fixed grass-cutters, designed and constructed for grass-cutting and used solely for that purpose.

Tractors, however, offer the most scope for misinterpretation. To qualify as an exempted/excepted vehicle, the tractor must be “agricultural” - designed and built for use other than on roads.

To be driven on public roads legally with red diesel in the tank, tractors must be used solely for one of three applications – “purposes relating to agriculture, horticulture or forestry, for cutting verges bordering public roads, or for cutting hedges or trees bordering public roads or bordering verges which border public roads”.

What machinery cannot be fuelled with red diesel?

The chief confusion surrounding the law on red diesel centres on the definition of what the memorandum means by “agriculture, horticulture and forestry”.

HMRC's view remained clear that the definition did not include (and never had) landscaping and maintenance of recreational facilities.

The public sector and amenity organisations may have naively deployed red diesel and been forced to make costly changes later. Agricultural contractors for example, could be faced with similar setbacks if they've driven tractors while undertaking amenity contracting alongside their mainstream business.

The view now is that if a tractor is utilised for amenity work it cannot also do agricultural work – unless it is retaxed and the fuel drained down and changed, which in most cases is impracticable.

To avoid paying the penalty, the only safe advice is to fuel tractors on white diesel if they are not used 100% on agricultural, horticultural or forestry duties.

What are the penalties for illegal use?

It is a criminal offence to misuse or supply red diesel or mix it with any other fuel, as it is to move any designated chemical marker or dye from the red diesel or add anything that might counteract the marker.

Offenders can be penalised by being charged for the backlogged fuel and even by having vehicles seized.

In some cases, offences may be dealt with in the criminal courts where a prison sentence of up to seven years could be imposed.

They may also be asked for backdated fuel payments, although some leniency appears to be shown in the amenity sector to allow for pre-memorandum confusion surrounding the use of red diesel.

The threat of punishment is real, however and one council has been asked for payments backdated to Jan '08.

The council had their parks department tractors dipped for red diesel usage by HMRC, believing that their grounds maintenance operations were thought to be exempt from full excise duty.

The assessment resulted in a notice to pay more than £20,000 in excess duty, covering the period from January 2008.