

Update on the use of red diesel



Andy Leith reports on the implementation of the new tax treatment for red diesel

Earlier in 2021 the UK Government confirmed its decision to remove the entitlement to use red diesel from most sectors from 1st April 2022. Confor had lobbied hard on behalf of the industry, but there was mixed news for businesses in the Confor family; forestry retains its entitlement to use red diesel, but activities outside the forest gate such as wood processors will lose that entitlement.

In the last 18 months, we have been lobbying furiously to seek a delay in the implementation of this new tax treatment for wood processors. As I type up this article, we are drafting another submission to HMRC to emphasise how the current exponential increases in energy prices on top of the loss of rebated fuel will have double-whammy effect on operational costs, reducing the financial ability to invest in green technologies and in some cases maintain viability, threatening jobs. I will continue to keep Members apprised of developments.

In response to Member queries over what activities actually fall into the forestry exemption, we sought clarification from

HMRC on the most common queries and this was their response:

HMRC: "For context, we define 'forestry' as "the upkeep and management of forests including the growing and harvesting of timber and other forestry products", and a 'forest' as:

a. An area of land where trees have been planted (often in rows and columns) with the intention that they will be grown and harvested for timber, or other forestry products.

b. A pre-existing natural forest which is being maintained and managed so that it may be harvested for timber, or other forestry products.

Another important point to mention is that, from 1 April 2022 the eligibility for vehicles to use rebated fuels will be assessed on both what vehicle is (only 'agricultural', 'special' and 'unlicensed' vehicles can use rebated fuel) and how it is being used. So, if an activity is allowed under our above definitions this doesn't automatically guarantee any vehicle can use rebated fuel for that purpose (as opposed to 'machines' which can all use rebated fuel if using it for an accepted purpose). Please see our interim guidance on what will constitute as an 'excepted vehicle' from 1 April - we're also updating Excise Notice 75 to include further detail on this soon."

Confor: In order to manage the forests and extract the harvested timber we have to build access gravel roads in the forest, it is my interpretation that the machinery used (excavator diggers, dumpers and rollers) to extract the materials within the forest boundaries and build these access tracks/roads will still be able to use the rebated fuel.

HMRC: "Yes - this is correct."

Confor: Where a landowner has received planning permission to construct a windfarm within a forest, the specialist machinery used to harvest and remove the trees will be able to use rebated fuel as this is still a forest harvesting operation using specialist machinery. The construction of the windfarm including the construction of additional access roads will not be able to use the rebated fuel?

HMRC: "Yes - vehicles and machines that are used for purposes relating for forestry

can be used for any other purpose on the land where they are ordinarily kept.

You are also correct that the construction of the windfarm including the construction of additional access roads will not be able to use the rebated fuel."

Confor: Some tree species in the country are under attack through disease causing widespread death of Ash trees with a significant amount of these being part of hedgerows/field boundaries along public roads. For public safety there are large programmes of work on behalf of local authorities to remove these trees using specialist forestry machinery, I assume rebated fuel can be used for these operations too.

HMRC: "Yes - cutting trees, hedges and verges bordering public roads are allowed activities."

Confor: Would you mind helping clarify what guidance I should be giving contractors/operators who use their machinery for forestry and agricultural activities for the majority of the time, but will take jobs for short periods in non-forestry activities such as constructing public roads or development sites, how would they best manage switching fuels?

HMRC: "If switching from an allowed and non-allowed use, they will need to drain the tank of the vehicle/machine of rebated fuel and flush it through with full duty paid diesel or biofuels."

Given many have expressed concern that this would be costly to do every time they switch between uses, we're advising the following options to mitigate this:

- have a fleet of vehicles/machines that are only used for allowed purposes and run on rebated fuel, and some that only run on full duty paid diesel or biofuel and are used for any other purposes.
- run all vehicles/machines on full duty paid diesel or biofuels for all uses."

In recent conversations with HMRC it has become clearer that some activities within forest boundaries will not be exempt, such as constructing buildings and mountain bike track construction because they are not considered to be core to forest management.

I am sure other queries will arise for us to consult with HMRC on. If you have any, please do not hesitate to contact andy.leitch@confor.org.uk

Confor has been consulted on the development of the current interim guidance from HMRC, the latest on both when rebated fuel can be used and fuels for use in vehicles (Excise Notice 75) before 1 April 2022 can be found at www.gov.uk, we recommend you read through them.

