



Written Submission to:

HMRC

Implementation of the Court of Justice of the European Union (CJEU) judgment on diesel fuel used in private pleasure craft.

September 2019



Introduction

RYA Scotland is the Home Country body of the Royal Yachting Association and is the recognised governing body in Scotland for all forms of dinghy and yacht racing, motor and sail cruising, RIBs and sports boats, windsurfing, canal boats, and personal watercraft. We refer to these disciplines collectively as 'boating'.

Our purpose is '*to promote and protect safe, successful and rewarding boating in Scotland*'. We represent a community of about 76,000 people actively engaged in boating activity in Scotland, over 21,000 of whom are volunteers and members of RYA affiliated clubs. We support 331 local clubs and RYA recognised training centres, the majority of which are within Scotland's coastal communities and inland waterways. Our geography extends to the whole of Scotland and includes some 59% of the UK coastline.

RYA Scotland is volunteer-led, with up to 30 volunteers engaged in our committee structure at any one time and has a professional staff of 12.

As the Scottish Governing Body, we are not in a position to respond to the consultation using the survey provided but submit the position below as being representative of an entire community affected. This is commensurate with, and in addition to, the response from the Royal Yachting Association.

Background

The community we represent draws interest from people of all social and economic backgrounds for whom boating is their sport, recreation or business. These boating interests encompass vessels of many forms whether this be a large motor yacht in a marina, a small sailing dinghy maintained in the garden or a canal boat based in one of Scotland's inland waterways. Together these interests contribute to the national club infrastructure of Scottish sport, the growth of an established industry around marine trades, marine tourism and the economy of the country, particularly in remote coastal communities.

The scope of boating includes a high proportion of recreational and business activity that relates to vessels with inboard engine systems. These are almost exclusively dependent on diesel as a fuel and of those using diesel, *all* will be reliant on the use of 'red' diesel. A small proportion of power boats having outboard engines will utilise petrol for propulsion but are not usually involved in cruising activity.

Marine tourism in the context of our interest is predominantly people using their boats or chartering boats to travel the waters of Scotland's coasts, lochs and inland waterways. This is increasingly being recognised as a major contributor to the tourism economy of Scotland with a current value of £130.1m* much of which reaches into remote, coastal and island communities for whom this is a significant source of employment and income.

Over 2700 FTE* jobs are sustained in the industry surrounding marine tourism and the servicing of the needs of the boating community. These interests include mooring and marina provision, engineering, repairs, sail making, pontoon manufacturing and installation, dredging operations, construction, restaurants, chandlery, chartering, accommodation and more.

Scotland's Yacht Charter businesses are in the main yacht management agencies, i.e. they manage yachts on behalf of an owner and do not hold their own vessels for hire.

Implications of the implementation of the CJEU judgement

For individual owners:

We are deeply concerned over the impact on individual boat owners and would advocate for the longest possible term for transition.

Individual owners of sailing vessels will generally have between 50 and 120 litre diesel tanks. Yachts are not able to sail all the time and often have to motor to take advantage of tidal gates, overcome a lack of wind or simply to enable a voyage to be completed within a given holiday period. This necessitates that a sailing yacht will require to refuel usually once during a voyage.

Power vessels which rely solely on their engines for propulsion will be designed with larger tanks, several hundreds or even thousands of litres, but inevitably consume their reserves much more quickly than a sailing vessel and will plan their routes to enable refuelling on a regular basis.

The availability of diesel fuel along the length of the Scottish coastline is a critical factor in both the sustainability of the marine tourism undertaken by sailing yachts and power craft and the safety of vessels needing to rely on engine power, either periodically or wholly and particularly in times of distress.

The 2019 'Welcome Anchorages' publication lists 35 locations in the large area from Ardnamurchan Point to Cape Wrath including the Western Isles. Of these, 16 provide no fuel, 6 provide diesel in cans and only 13 provide diesel from a pump. Most of these are commercial ports that will need to continue to supply red diesel as this is their primary market. The likelihood of these 13 suppliers installing the additional infrastructure to supply white diesel purely for the recreational market is very low making it entirely feasible that the supply of white diesel in this area is non-existent.

Regardless of the type of vessel, owners are recommended to keep their tanks full through the winter period to avoid issues with condensation. In such circumstances many sailing vessels may well require several years to ensure the red diesel in their tanks is fully diluted and the dye marker washed out by use of white diesel. We foresee a considerable need for red diesel to be drained from leisure craft and disposed of in an appropriately controlled manner and systems chemically cleaned to remove the marker completely. The consultation focusses on the practicalities and cost of implementing the supply of white diesel but does not examine the monetary or environmental cost of disposal or recycling of red diesel.

Notwithstanding the challenges of implementing a supply of white diesel, commercial marine sites will be faced with the practicality of emptying residues of red diesel from the tanks of all private pleasure vessels along with fluids generated from flushing and cleaning tanks. This will necessitate handling, storing and disposing of many thousands of litres of fluids, old fuel and residues a percentage of which will be hazardous to the environment. British Marine Scotland are clear that the industry is not equipped for this. Whilst most marina sites have old oil disposal they do not have the facility for the volume they will be faced with. Further, the manpower to carry this out on hundreds of boats per site does not exist. The current lag in skills training in the marine sector means it would take several years to bring new recruits up to suitable qualification levels to accommodate this volume of disposal. Consequently, individual owners are likely to struggle to find suitable disposal facilities.

It is impossible to see a situation whereby disposal can be provided without cost and there is a considerable risk of illegal dumping of red diesel and the associated impact on the environment. In distant regions or islands, disposal facilities may never be available given small commercial harbours and fish quays that currently provide red diesel to all sectors of the boating community, are unlikely to invest in these disposal facilities. The risk of illegal dumping of unwanted red diesel will be greater in these areas as will the impact on what could easily be fragile local environments.

Further, even with suitable facilities for draining and disposal of red diesel, the cleaning of drained systems to eliminate the red marker is an unquantified process. By design the red marker dye is very difficult to

remove from a system and consequently will remain in a cleaned and 'honest' white diesel system for an unknown period. There is a real need for any implementation process to accommodate this cleaning period and for authorities to recognise the likelihood of an honest owner still having trace red marker in their tanks or system for some considerable time after the implementation date.

The consultation suggests the installation of separate tanks is an option to owners. We disagree on the grounds that a) it is immensely impractical to do given the design and production of leisure vessels does not consider additional fuel tanks and b) this would be an enormous additional cost relative to the whole value of a vessel such that the vast majority of owners will choose not to undertake such alterations. We believe there are likely to be simpler solutions than to expect owners to add tanks.

For marine trade suppliers of diesel

There are two main suppliers of diesel to the marine leisure market. These are; A) the commercial harbours who service mainly the fishing fleet or commercial operators and supply the leisure market as a by-line in their operations and B) the marina based suppliers (including small transit marinas), for whom the supply of diesel to leisure boats is a key line in their business.

It is impossible for existing infrastructure to accommodate the introduction of white diesel while continuing the supply of red and a separate, entirely new installation is required. Consequently both commercial harbours and marina based suppliers face a considerable issue regarding the cost of installations and adaptations for the supply of white diesel and disposal of unwanted red diesel, and fluids and residues from cleaning processes.

We are concerned that these additional costs, which will only enable continuity of service to existing customers and will not realise any additional sales or revenue, may prove prohibitive for smaller scale operations, many of whom are located in the more remote coastal locations of Scotland.

The consultation suggests that some harbours and marinas will choose only to supply white diesel. The evidence from British Marine Scotland suggests this is only a likely scenario for larger or more frequented marinas where approximately two thirds** of their diesel trade is for leisure, limiting the validity of this assumption. In Scotland this is only likely to be valid for the larger marinas on the Firth of Clyde.

However we suggest that to the contrary, and as we have already noted, there are rather few marinas on the west and north coasts of Scotland and we are more concerned that commercial harbours will choose to only supply red diesel leaving leisure vessels with very little or no supply options. Examples of harbours where this is currently the case include Gareloch, Kinlochbervie and Stromness. Such circumstances create a critical issue over continuity of supply along the coastline of Scotland and may well lead to some localities becoming unreachable for certain vessels.

Where faced with an absence of fuel supply, commercial craft having to refuel with white diesel will only suffer a financial penalty. Recreational craft unable to refuel will risk running out of fuel in potentially dangerous situations.

Again, we believe there are simpler solutions, such as moving entirely to white supply and rebating commercial users thereby eliminating the need for a dye marker, which would enable a full transition and continuity of supply in more remote locations. We would advocate for a lengthy period for transition within which simpler less costly solutions should be explored.

We would add that the marine industry will require direct financial support to adapt to this ruling. Diesel supply in remote areas should be given significant support to adapt and financial aid to ensure the necessary installations can be made.

For the charter boat trade

With the yacht charter business in Scotland operating mainly on the management of owners yachts, identifying when a given vessel is operating commercially or not will prove to be extremely difficult for suppliers.

For the same reasons given above, we do not see owners being willing to install separate tanks for white and red diesel and the suggestion in the consultation that such owners should drain and clean their tanks each time they use the vessel for leisure is sadly ludicrous.

We fear the costs and implications of adapting to white diesel will lead many existing owners to simply withdraw from the charter fleet reducing availability and further affecting the marine tourism economy in Scotland.

Conclusion

RYA Scotland is deeply concerned over the implications of the implementation of the CJEU judgement on individual boat owners, the marine trade, yacht charter businesses and Scotland's marine tourism economy and believe the longest possible term for transition is essential.

The totality of the negative impact reaches well beyond the financial implications for individuals or business. We foresee a reduction in the availability of charter boats in Scotland, a reduction in the shore spend from marine tourism and consequential negative impacts on employment in remote coastal areas of Scotland. Further, such reduced availability has an impact on the opportunities for new participation and will affect club membership as owners reach the tipping point in affordability of boat ownership.

We believe a very long implementation timeframe and significant support will be necessary for marine suppliers to adopt the provision of white diesel and for innovative solutions to be explored. Future support must include direct financial support to ensure the comprehensive supply of fuel for the leisure market is sustained.

We are concerned that HMRC has not offered any consideration of procedural or technological solutions that may make implementation less of a burden on the individual leisure vessel owner or the marine trade and time must be made available to explore such options with the various stakeholders to avoid burdensome processes and costs.

In light of the current discussions around the UK's departure from the EU, RYA Scotland expects that the Government would not implement the EU Court judgement if we leave the EU without a withdrawal agreement.

James Allan - Chief Executive Officer

September 2019

* Sailing Tourism in Scotland (EKOS 2016)

** British Marine Scotland estimates.