

**HYDROCARBON OIL DUTY: CONSULTATION ON
CHANGES TO EXCEPTED VEHICLE SCHEDULE**

2 December 2004



HM Customs and Excise
Business Services and Taxes



HM TREASURY

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1. INTRODUCTION

Background

1.1 The Chancellor of the Exchequer announced in his Pre-Budget Report Statement on 2 December that the Government would consult on whether to make changes to the list of vehicles entitled to use rebated gas oil (red diesel).

1.2 Under the Hydrocarbon Oils Duty Act, 1979 (HODA) no duty rebate is allowed on fuel for road vehicles. A “road vehicle” is interpreted as “a vehicle constructed or adapted for use on roads, but does not include any vehicle which is an excepted vehicle within the meaning given by Schedule 1 to this Act”. Certain vehicles were excepted from road fuel duty because they were either used exclusively off-road or used public roads only incidentally. Since they therefore did not contribute to road damage or require road-related public services, it was felt that they should not be required to pay for these through the full rate of fuel duty taxation.

1.3 Vehicles which are excepted are able to use rebated gas oil, often known as ‘red diesel’. In line with the justification that such vehicles should not pay the full rate of road-related tax, rebated gas oil has an effective rate of duty of 5.22ppl pence per litre, 41.88ppl less than that for main road fuels (47.10). But it is therefore very important that the rules on which vehicles can qualify for excepted status should be as clear and unambiguous as possible. The lower duty on rebated gas oil creates a strong incentive to exploit any ambiguity or lack of clarity to take advantage of excepted vehicle status.

1.4 Oils fraud costs the Exchequer more than £0.5bn a year and most of this figure can be attributed to misuse of rebated gas oil on public roads. The lack of clarity surrounding precisely which vehicles are legally entitled to use rebated oil on road results in real difficulties in distinguishing between legal and fraudulent use, undermining the efforts of enforcement agencies attempting to tackle this revenue loss.

1.5 The 1979 Schedule envisaged relief for vehicles that were either used exclusively off-road or used public roads only incidentally. In recent years, however, the nature and number of vehicles eligible to use rebated oils has changed significantly. Changes have included:

- New vehicles coming on to the market with design characteristics not adequately covered by the legislation.

- Vehicles developed that meet the legislative criteria but are intended for purposes not envisaged when those criteria were devised, for instance the aerial platforms used for television outside broadcasts.
- Eligible classes of vehicles have been expanded by court and tribunal rulings.
- New technology has made existing types of excepted vehicles more roadworthy, thus encouraging more road use.

1.6 We believe that in some cases the current excepted vehicle categories and definitions are no longer fit for purpose. Over recent years there has been growing evidence that certain categories of vehicles using red diesel, while formally complying with the list of excepted vehicles in HODA, do not conform to the original underlying criteria – that is, they are not vehicles using roads only incidentally. There is therefore a strong case for considering re-drawing the list of excepted vehicles, to ensure it is fit for purpose and takes account of more recent developments such as technological innovation and new types of vehicle.

1.7 This consultation considers what changes might be required to improve the clarity of Schedule 1 of HODA and to avoid ambiguity. The present ambiguity presents a number of concerns. First, it means that there is not a level playing field – different businesses apply different interpretations, giving some an unjustified advantage over others. Second, if there are vehicles using roads more than incidentally while using rebated gas oil, such vehicles are effectively not paying their fair share of road costs. These costs instead fall, unfairly, on other road users. Third, ambiguity creates a higher risk of tax evasion and fraud, thereby necessitating greater expense on the part of enforcement agencies, which must be paid for by other taxpayers. Fourth, road use by vehicles using red diesel raises environmental concerns. Rebated gas oil typically has a far higher sulphur content than standard road fuels: if the duty differential is incentivising the use of vehicles using red diesel on roads this risks increasing air pollution. Fifth, there are also concerns about safety. Off-road vehicles are not subject to the same rigorous standards of safety as road vehicles, so if the duty differential is encouraging their use on roads this risks increased danger to all road users.

1.8 The aim of this consultation is to develop a more clearly defined schedule taking into consideration the factors outlined above and the opinions of the users of excepted vehicles, and other interested parties, before the Government considers whether or not to bring changes forward into law next year. A more clearly defined Schedule may lead to fewer excepted categories than at present, though this issue remains firmly open at this stage.

1.9 Further copies of the consultation paper can be obtained from Customs and Excise at the address given in paragraph 1.6 below, or via the Customs web site (www.hmce.gov.uk). Copies are also available from the Treasury and are available at the Treasury website (www.hm-treasury.gsi.gov.uk)

How to respond

1.10 The areas where views are sought are highlighted in bold throughout this document, but a summary is provided at Annex A. Views on other relevant issues would also be welcomed.

1.11 In accordance with Cabinet Office guidelines, the consultation will run for 90 days. Therefore, all responses should be sent by 2 March 2005, by e-mail if possible, to:

envirotax.bst@hmce.gsi.gov.uk

or by post to:

Tim Smith
HM Customs and Excise
Environmental Taxation Development Division
1 Parliament St.
London SW1 2BQ

or by fax to:

Facsimile – 020 7270 4589

1.12 All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

Publication of responses

1.13 Responses may be made public. If you do not wish your response to be included in any published summary of views, you should state this clearly in your reply. In accordance with the Code of Practice on Access to Government Information, you should also provide a summary of your response for publication that includes a specific reason why the full response must remain confidential. If you are replying by e-mail, it will be assumed that your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission.

Legislative timetable

1.14 Should Ministers decide as a result of this consultation exercise that the definition of a road vehicle or an excepted vehicle should be changed, the earliest opportunity for legislation will be Finance Bill 2005. The Finance Bill may contain draft legislation providing HM Customs and Excise with the power to amend Schedule 1 of the Hydrocarbon Oil Duties Act 1979 by Treasury Order. If this route is taken, Customs will consult further on possible changes to definitions contained within any Treasury Order they might produce subsequent to Royal Assent to the Finance Bill.

Regulatory Impact Assessment

1.15 The regulatory implications, which will be informed by responses to this consultation, will be an important factor in any decision. An initial Regulatory Impact Assessment (RIA) is included at Annex B of this document. If Ministers decide to proceed with changes, a full RIA will be published as appropriate.

2. REASON FOR EXCEPTED VEHICLES

What are excepted vehicles?

2.1 Excepted vehicles are vehicles that are not road vehicles for the purposes of the Hydrocarbon Oil Duties Act, 1979 (HODA). This means that they are legally entitled to run on rebated gas oil (sometimes known as 'red diesel' because of the red marking dye added to assist in detection of illegal use). The duty rate for rebated gas oil is 5.22 pence per litre (ppl). The most commonly used grade of gas oil for diesel engined road vehicles, ultra low sulphur diesel (ULSD), has a duty rate of 47.10ppl.

2.2 Excepted vehicles powered by liquefied petroleum gas (LPG) or compressed natural gas (CNG) are exempt from the 9 pence per kilogramme duty on road fuel gases.

2.3 Excepted vehicles were intended under the 1979 Schedule to be either those used off-road or those whose road use is 'incidental' because the lack of road use justified the rebate on the basis that those vehicles did not benefit from the public provision of the road network. The criteria for excepted vehicle status are set out in Schedule 1 of HODA. This is attached at Annex C.

History of excepted vehicles

2.4 From the introduction of hydrocarbon oil duty in 1928, the full rate of duty applied only to light oil (petrol), with all heavy oil, including tractor fuel, being entitled to a rebate. The development of lighter diesel engines, suitable for use in road vehicles, resulted in the full rate of duty being extended in 1935 to heavy oil used as road fuel. Continued use of rebated heavy oil was permitted in the case of those vehicles such as agricultural engines, tractors, ploughing, excavating and trench digging machines that paid a lower rate of vehicle excise duty (VED) on the grounds that the use of roads was incidental. No such concession was allowed for those vehicles, such as those used by the emergency services or armed forces, that were exempt from VED on purely social grounds or because of public ownership.

Excepted vehicles and vehicle excise duty (VED)

2.5 The Schedule under the 1979 Act sets out a list of excepted vehicles, while the VED legislation also allows for concessions to be made for certain types of vehicle. The different categories do not match exactly as the different legislation was designed at different times for different purposes.

2.6 Definitions of excepted vehicles in HODA originally made direct reference to those sections of the Vehicles (Excise) Act, 1971 (VEA), dealing with 'special vehicles' and exemptions. 'Special vehicles' were entitled to the lowest goods vehicle rate of VED regardless of weight. The vehicles falling into this category were tractors, agricultural machines, digging machines, mobile cranes, works trucks and mowing machines, all of which qualified as excepted vehicles. Vehicles that were exempt from VED and which qualified as excepted vehicles were: vehicles used only for passing to and from land in the same occupation; road construction vehicles; and road rollers.

2.7 The VEA was replaced by the Vehicle Excise and Registration Act, 1994 (VERA), though the definitions in HODA continued to refer to the 1971 VEA. In 1995 the decision to remove the link between the VEA and HODA was made, and Schedule 1 was amended to include its own definitions of excepted vehicle. These definitions were taken from the VEA with only minor amendments.

2.8 In 1995 the VED exemption for road construction and maintenance vehicles was repealed. Road construction vehicles ceased to be entitled to any special treatment for VED purposes, whilst road rollers were moved to the special vehicle category. Snow clearing vehicles and gritters, which had previously been exempt as road maintenance vehicles, joined tractors and other agricultural vehicles in a new 'special concessionary category', with duty charged at 25% of the general rate. In 2001 this special concessionary vehicle category became exempt from duty.

2.9 In 1996 the VED special vehicle category was extended to tractor units and goods vehicles not used for the conveyance of any goods or burden of any description. This is consistent with the VED definitions on digging machines, mobile cranes and mobile pumping vehicles (the latter added in 2001), all of which are restricted from carrying any load except such as is necessary for their equipment or propulsion. This contrasts with works trucks that can carry loads but are narrowly restricted in the use they can make of public roads, and points up the differing rationale underpinning special vehicle categories.

2.10 VED is administered by the Driver and Vehicle Licensing Agency (DVLA), and appeals under VERA are heard in magistrates' courts. Hydrocarbon oils duty is administered by HM Customs and Excise, and appeals under HODA are heard in VAT & Duties Tribunals. Tribunals have taken the view that classification of a vehicle in a particular way for one purpose is not necessarily an indication of its correct classification for another.

2.11 Numbers of vehicles in special and former special concessionary categories that correspond to excepted vehicle categories are given in Annex D, together with a more detailed explanation of why in practice these figures cannot be taken as a reliable guide to excepted vehicle numbers.

Excepted vehicles and other exemptions

2.12 Excepted vehicles under HODA and special and special concessionary vehicles under VERA may also benefit from exemptions or concessions under other fiscal or regulatory regimes. These include:

- Large Goods Vehicle Licences for Drivers
- Operator Licences for Goods Vehicles
- Plating and Testing Regulations
- Drivers' Hours and Tachograph Rules
- The London Congestion Charge

2.13 Exemptions for different classes of vehicles using public roads therefore exist under at least seven different regulatory or fiscal regimes. The exemptions under these regimes are not aligned completely, owing to differences in the scope of the regimes and of the legislative purpose underpinning them.

2.14 In principle, aligning excepted vehicle definitions with definitions of special or exempt vehicles under VERA, or with exemptions under other regimes, should have benefits for users where the result is a reduction in red tape. However, alignment between different regimes could also result in losing sight of the underlying purpose of the individual pieces of legislation that may have different objectives. We would welcome stakeholders' views on the interaction between the excepted vehicles schedule and other exemptions in the context of this consultation on the excepted vehicles schedule.

Criteria for excepted vehicles

2.15 Vehicles used exclusively off-road or using roads only incidentally are entitled to use rebated gas oil under the Schedule. The rationale behind this was to avoid placing an unnecessary compliance burden on businesses that employ off-road machinery not suited by design or adaptation for use on road, but which unavoidably makes *incidental use* of the road network. By *incidental use* is meant that journeys on road are of *brief duration* or *infrequent occurrence*.

Problems with current categories

2.16 We believe that in some cases the current excepted vehicle categories and definitions are no longer adequate for their purpose. This has resulted in entitlement to use rebated gas oil being broadened beyond the extent intended, and has led to grey areas of interpretation that cause confusion for users, and which waste the time of enforcement agencies attempting to tackle the revenue loss arising from the misuse of rebated gas oil on public roads. The difficulties experienced by enforcement agencies in distinguishing between legal and fraudulent use of rebated gas oil are illustrated by photographs included at Annex E. These photographs illustrate how in the case of similar vehicles eligibility can depend on minor modifications, or on the precise purpose for which the vehicle is being used. For instance the classification of a tractor can depend on the use to which the load it is carrying is to be put and a road sweeper qualifies as an excepted vehicle if used in the environs of a road construction site, but not if used for general road cleaning.

2.17 Since the current definitions in HODA were originally written, technology and design have moved on considerably. New vehicles have come on to the market with design characteristics not adequately covered in HODA. At the same time, vehicles have been developed that meet the criteria in HODA, but are intended for purposes not envisaged when those criteria were devised, such as the aerial platforms used for television outside broadcasts.

2.18 Vehicles intended to perform tasks off-road are increasingly being constructed with on-road comfort and performance in mind, enabling them to make greater use of the road network. This has led, most notably in the case of high speed tractors, to their being used in preference to vehicles that are more suited to the intended purpose but which do not qualify to use cheaper rebated gas oil. Excepted vehicle status should not be an incentive to use vehicles on road that

are not intended for extensive (non-incident) road use, and which are not required to comply with the rigorous construction and use provisions applied to road vehicles for safety reasons.

2.19 Exploitation of the use of rebated gas oil beyond that envisaged by the 1979 legislation poses a significant problem for the UK, owing to the size of the duty rebate for users of excepted vehicles. Many other European states either have a smaller differential or do not provide relief to off-road vehicles. For example, Sweden does not permit the use of rebated fuels for any vehicles.

2.20 A gradual expansion in the scope of the current regime would also have consequences for emissions. Most rebated gas oil has a much higher sulphur content than road fuel: up to 2000 parts per million compared with maximum of 10 parts per million for sulphur free diesel. In addition to making the fuel inherently more polluting, the high sulphur content also prevents these vehicles being fitted with pollution abatement technology. As a result, vehicles using rebated gas oil tend to produce far more by way of harmful emissions than those running on road fuels. This is another strong argument in favour of ensuring that use of rebated gas oil is restricted to the vehicles for which the excepted vehicles regime is intended, whilst also creating incentives to move to cleaner rebated oils over time – something the Government is also considering how best to take forward. The Government does not believe that excepted vehicle status should act as an incentive to use more polluting high sulphur rebated gas oil on road in preference to ultra low sulphur or sulphur free diesel, especially in areas of high background pollution.

Examples of how current criteria may not be fit for purpose

2.21 There have been a number of fairly recent developments – including legal judgments - highlighting the lack of clarity in the Schedule, and suggesting the current legislative regime may be in need of updating. Specific examples of this are:

- the use of high-speed tractors for road haulage in preference to heavy goods vehicles;
- lorries modified to carry equipment for installing road furniture such as signage and barriers qualifying for excepted vehicle status as road construction vehicles; and
- lorries mounted with telescopic booms for lifting workmen qualifying for excepted vehicle status as mobile cranes.

2.22 The next chapter requests stakeholders' views on what changes to HODA Schedule 1 might be required to increase clarity and avoid ambiguity.

3. AREAS OF POSSIBLE CHANGE

General issues for discussion

3.1 This consultation aims to give stakeholders an opportunity to contribute views on options for change of the excepted vehicles schedule in HODA. The original legislation envisaged that vehicles should only be permitted to use rebated gas oil if they do not use the road network or do so only incidentally. The Government also has a well-established commitment to using economic instruments to promote the reduction of harmful emissions from road transport, while also seeking to protect Exchequer revenues. Any change would aim to remove ambiguity that may have arisen in recent years in regard to the schedule, and increase clarity.

3.2 We would welcome stakeholders' views on the Government's analysis of the current position in regard to the schedule, and in particular the view that recent changes, for example technological developments and court rulings have meant the excepted vehicle criteria have changed and moved beyond the criteria initially envisaged in the 1979 legislation.

3.3 We would welcome stakeholders' view in regard to amending the current Schedule to take account of these recent developments. We would also welcome stakeholders' views on the interaction with the exemptions in the VED system, and whether there are issues here that the Government should be considering, in the context of the review of the excepted vehicles schedule.

3.4 We would also welcome specific views, and individual areas where change may be needed are listed below, with some outline questions as prompts.

Tractors

3.5 As with works trucks and vehicles used between different parts of land categories, tractors qualify for excepted vehicle status on the grounds that journeys are of brief duration. There has also been the recognition that, like digging machines or mobile cranes, they may infrequently be required to make longer journeys. At present, there is no restriction upon goods being carried, so long as they are transported for purposes relating to agriculture, horticulture or forestry. Equally, no limit is placed on the length of journey that may be undertaken.

3.6 Increasingly tractors are being used to haul agricultural goods simply because entitlement to use rebated gas oil makes them more economic for this purpose than other forms of haulage. This is resulting in unfair competition with road vehicles. Furthermore, there is considerable confusion as to when a load may be said to be transported for agricultural purposes and when not, with contractors applying different interpretations.

3.7 Tractors, so long as they are not driven at more than 20 mph on public roads, are subject to far less rigorous requirements under the Road Vehicles (Construction and Use) Regulations 1986 than are other road users: this applies in respect of braking systems, condition and maintenance of tyres, noise levels, permitted overhangs, seat belts and rear under run protective devices. Furthermore, tractors are exempt from the requirements of the Plating and Testing Regulations. Given these lower safety standards, and the tendency of wide, slow-moving vehicles to cause road congestion, it is clearly desirable that tractors of this type should make use of roads only in circumstances where such use cannot be reasonably avoided.

3.8 More suited to use on road are the new generation of tractors, which can manage speeds comfortably up to 40 mph. These tractors have been constructed to a higher standard including braking systems comparable to a road vehicle and individual sprung suspension to the wheels. The cab units of these vehicles are much improved. The construction allows enhanced performance on road with driver comfort and safety very much in mind. However, these tractors when used for agricultural purposes are equally exempt from the requirements of the Plating and Testing Regulations, and are exempt from many other regulations under the agricultural banner.

3.9 These fast tractors are increasingly being used on road to haul agricultural loads that previously would have been hauled by conventional HGVs using diesel on which the full rate of duty had been paid. In the case of road haulage for agricultural loads, there is no reason why a lower rate of duty should apply than for other goods. Nor is there any obvious justification for providing, through entitlement to rebated gas oil, an incentive to use vehicles which conform to less rigorous safety requirements, which are less fuel efficient and which produce more harmful emissions.

3.10 The use of converted HGVs as 'tractors' is another area of concern. Such vehicles are ostensibly to be used for agricultural work, even though they are often capable of speeds in excess of 50 mph on roads. Our experience is that these vehicles are being used to tow an agricultural type trailer with brakes inadequate for these sorts of speeds, doing work that constitutes long-distance road haulage under the guise of agricultural activity.

Q1. We would welcome views on which criteria might be effective in discouraging inappropriate road use by tractors using red diesel. For example:

- a) a restriction on the distance travelled?**
- b) a restriction on maximum speed?**
- c) further restrictions on the activities that could be undertaken?**

Agricultural engines

3.11 At present there is no definition of what actually constitutes an agricultural engine. This has led to anomalies, for example, lorries mounted with agricultural machinery qualifying for excepted vehicle status even when this machinery is powered from a different engine from that used for propulsion. Furthermore, there is a wider range of specialist machines becoming available to farmers, such as material handlers that serve many purposes. Greater clarity is required as to which vehicles are entitled to use rebated gas oil.

Q2. We would welcome views on which classes of agricultural vehicle might be included within the agricultural engine definition and what the defining characteristics of these vehicles should be.

Snow clearing machines and gritters

3.12 The nature of these vehicles means that road use is integral to their purpose. These vehicles serve a valuable purpose, and the cost of fuel is ultimately borne by public authorities. However, this is true also of other classes of vehicle which are exempt from VED, but which are not entitled to excepted vehicle status.

Q3. We would welcome views on whether there are any circumstances in which there would be principled reasons for snow clearing machines and gritters to continue to be entitled to use rebated gas oil.

Mobile cranes

3.13 Many vehicles with rotary mounted booms, such as cherry-pickers or aerial platforms with articulated or telescopic booms, have been brought into the mobile crane category as a result of the High Court ruling in Nationwide Access Ltd and PTP Aerial Platforms Ltd v Commissioners of Customs and Excise. In most cases such booms will be mounted on an adapted road vehicle chassis, with these vehicles being expected to clock up significant road mileage in the course of their normal activities.

3.14 By their very nature, mobile cranes are road going for a large part of their life, and this is reflected in the requirement on operators to have a Large Goods Vehicle driver's licence. It is only the largest mobile cranes whose use of roads can be said to be infrequent; and even then the very largest are actually dismantled and moved by lowloader. The vehicles used to transport the dismantled crane are road vehicles and would correctly use road fuel.

Q4. We would welcome views on whether there is a continued need for a mobile crane category of excepted vehicle, and if so how entitlement to rebated gas oil might be limited to those vehicles that genuinely make incidental use of roads.

Road construction vehicles

3.15 There are clear arguments that the continued excepted vehicle status of road construction vehicles is an anomaly. There has not been an equivalent VED category since 1995. Furthermore, eligibility for excepted vehicle status under HODA has been extended as a result of rulings in VAT and Duties Tribunals. The rulings have deemed that road construction can be considered as more than simply the laying of the surface; all ancillary work such as crash barriers, lighting, drainage, fencing, etc. can now be included within the meaning of 'road construction'. This has brought into this category an unknown number of vehicles that are only minimally adapted for road construction work and which spend a significant amount of time on public roads travelling to and from jobs. Examples are road sweepers, flat bed lorries to carry safety barriers where they have a small ram fitted to the side, and slightly adapted tipper lorries which discharge grit through channels in the rear door.

3.16 The position of road construction vehicles is much the same as snow clearing machines and gritters. Again these vehicles serve a valuable purpose, and again the cost of fuel is

ultimately borne by public authorities, but as in the previous case this does not represent sufficient grounds for excepted vehicle status.

3.17 There are purpose-made road construction vehicles that genuinely make very little use of public roads. These however tend to be moved by lowloader, and whilst some minor excursions on road are inevitable this eventuality is catered for under other excepted vehicle categories.

Q5. We would welcome views on whether there is a continued need for a road construction vehicle category of excepted vehicle, and if so how entitlement to rebated gas oil could be limited to those vehicles that genuinely make incidental use of roads.

VED requirements

3.18 Licence evasion is a particular problem with special and exempt former special concessionary vehicles: the DVLA estimate an evasion rate of over 34%. As explained above, just because a vehicle is licensed as a special or exempt vehicle, it does not mean that it automatically qualifies for the equivalent excepted vehicle category. However, categories other than that specifically for vehicles used exclusively off-road are intended for vehicles licensed for on-road use. We are therefore of the view that it should be a condition of entitlement to use rebated gas oil that the vehicle is licensed in the appropriate VED category.

Q6. We would welcome views on whether there are any circumstances where it would not be reasonable to require an excepted vehicle to register in the equivalent VED special vehicle or special concessionary vehicle category.

3.19 Under The Road Vehicles (Statutory Off-Road Notification) Regulations 1997, the keeper of an unlicensed vehicle registered in the records kept by the DVLA must furnish a Statutory Off-Road Notification (SORN). When a vehicle is detected off-road with rebated gas oil in its tanks, it can sometimes be difficult to establish whether it has been used on road if the owner has not licensed the vehicle for road use.

Q7. We would welcome views on the proposals that, in the case of those unlicensed vehicles that require a SORN, entitlement to use rebated oils should depend on off-road notification having been made.

Annex A

Questionnaire

Note: Customs would be happy to receive consolidated responses from relevant trade associations and from other interested individuals. However, if individual businesses would like to respond on their own behalf, it would be helpful if you could state the following:

- company name, address and VAT number;
- annual turnover; and
- nature of the business and the scope of its activities.

Questions on which views would be welcomed:

A. We would welcome stakeholders' views on the Government's analysis of the current position in regard to the schedule, and in particular the view that recent changes, for example technological developments and court rulings have meant the excepted vehicle criteria have changed and moved beyond the criteria initially envisaged in the 1979 legislation.

B. We would welcome stakeholders' view in regard to amending the current Schedule to take account of these recent developments. We would also welcome stakeholders' views on the interaction with the exemptions in the VED system, and whether there are issues here that the Government should be considering, in the context of the review of the excepted vehicles schedule.

C. We would also welcome views on possible change where amendments to the excepted vehicles schedule could be made to make it more consistent with the principles set out. In particular:

Q1. We would welcome views on which criteria might be effective in discouraging inappropriate road use by tractors? For example:

- b) a restriction on the distance travelled?**

b) a restriction on maximum speed?

c) further restrictions on the activities that could be undertaken?

Q2. We would welcome views on which classes of agricultural vehicle might be included within the agricultural engine definition and what the defining characteristics of these vehicles should be.

Q3. We would welcome views on whether there are any circumstances in which there would be principled reasons for snow clearing machines and gritters to continue to be entitled to use rebated gas oil.

Q4. We would welcome views on whether there is a continued need for a mobile crane category of excepted vehicle, and if so how entitlement to rebated gas oil might be limited to those vehicles that genuinely make incidental use of roads.

Q5. We would welcome views on whether there is a continued need for a road construction vehicle category of excepted vehicle, and if so how entitlement to rebated gas oil could be limited to those vehicles that genuinely make incidental use of roads.

Q5. We would welcome views on whether there is a continued need for a mobile crane category of excepted vehicle, and if so how could entitlement to rebated gas oil be limited to those vehicles that genuinely make incidental use of roads?

Q6. We would welcome views on whether there are any circumstances where it would not be reasonable to require an excepted vehicle to register in the equivalent VED special vehicle or special concessionary vehicle category.

Q7. We would welcome views on the proposals that, in the case of those unlicensed vehicles that require a SORN, entitlement to use rebated oils should depend on off-road notification having been made.

Annex D

Initial Regulatory Impact Assessment (RIA)

Introduction

This initial regulatory impact assessment (RIA) considers the costs and benefits of the proposals outlined in the consultation document. A full RIA cannot yet be completed because we are still at the information gathering stage and no firm proposals have been agreed. A full RIA will be issued if it is decided to proceed with legislation as a result of this consultation.

Title of proposal

Hydrocarbon Oils Duty: Changes to Excepted Vehicle Schedule.

Purpose and objectives

Schedule 1 of the Hydrocarbon Oil Duties Act, 1979 (HODA) sets out those excepted vehicles that are permitted to use rebated gas oil. The Schedule originally envisaged that this would be restricted to those vehicles that do not make use of the road network or do so only 'incidentally'. Rebated gas oil incurs a lower duty rate than the main road fuels.

The purpose of the change would be to ensure that only those vehicles *intended* to be covered by the Schedule were covered, and that the gradual ad hoc expansion of the number and type of vehicles eligible was reversed. This would offer clarity to business, protect Exchequer revenues, and ensure perverse incentives to use more polluting fuels were avoided.

Changes in technology have altered the scope of the excepted vehicles Schedule of HODA through the development of vehicles that were not originally intended to be covered in the Schedule. Any changes would enable the Schedule to catch up date changes in technology and would restore the scope of the relief to its original intent. Entitlement to use of rebated gas oil on public roads would be restricted to those vehicles that only make incidental use of the road network; incidental use meaning journeys that are of brief duration or infrequent occurrence.

Vehicles intended to perform tasks off-road are increasingly being constructed with on-road comfort and performance in mind, enabling them to make greater use of the road network. The reduced level of duty for those vehicles that qualify to use rebated gas oil provides an incentive for their use in preference to vehicles that are more suited to the intended purpose but which do not qualify to use cheaper rebated gas oil. Excepted vehicle status should not be an

incentive to use vehicles on road that are not intended for that purpose, and which are not required to comply with the rigorous construction and use provisions applied to road vehicles for safety reasons.

Rebated gas oil is a more polluting fuel than standard road fuel. It has, for example, a maximum sulphur content of 2,000 parts per million compared to 10 parts per million of sulphur for sulphur free diesel. The higher emissions from rebated gas oil mean that its use outside of the scope that it was intended for is more damaging to the environment than when main road fuels are used.

Options

The consultation seeks high level views, though it also seeks comments on a number of specific proposals on areas where the excepted vehicles schedule might be amended. If no changes are adopted and the schedule is not modified to take account of changes in technology and other factors, the use of vehicles with higher and harmful emissions and lower safety requirements will continue to be encouraged. With no change, the excepted vehicles schedule will continue to lack clarity for both users and Customs and so create uncertainty as to exactly which vehicles are permitted to use rebated gas oil.

Benefits

The benefits to modernising the excepted vehicles schedule are:

- i. Up to date definitions which facilitate compliance by vehicle owners and policing by enforcement agencies.
- ii. The removal of a financial incentive to use less safe and more polluting vehicles on road.
- iii. Restoration of lost revenue to the Exchequer.

Costs

The consultation seeks views on the areas in which the excepted vehicles schedule might be amended. No estimate of the costs is available yet.

Business sectors affected

Any business sector that uses excepted vehicles, particularly the agriculture and construction sectors may be affected by change. Other sectors, however, such as road haulage, could benefit from exclusion of certain types of vehicle from the schedule. When any specific changes are proposed, an assessment of the business sectors affected will be made including the effects on small and medium enterprises.

Competition Assessment

We do not foresee any resulting measures impacting on competition between businesses in the marketplace, but we would welcome views on this.

Annex C

Schedule 1

Excepted vehicles

1 *Unlicensed vehicles not used on public roads*

(1) A vehicle is an excepted vehicle while:

- (a) it is not used on a public road, and
- (b) no licence under the vehicle Excise and Registration Act 1994 is in force in respect of it.

(2) A vehicle in respect of which there is a current certificate or document in the form of a licence issued under the regulations under section 22(2) of the Vehicle excise and Registration Act 1994 shall be treated for the purposes of sub-paragraph (1) above as a vehicle in respect of which a licence under that Act is in force.

2 *Tractors*

(1) A vehicle is an excepted vehicle if it is an agricultural tractor.

(2) In sub-paragraph (1) above "agricultural tractor" means a tractor used on public roads solely for purposes relating to agriculture, horticulture, forestry or activities falling within sub paragraph (3) below.

(3) The activities falling within this sub-paragraph are:

- (a) cutting verges bordering public roads;
- (b) cutting hedges or trees bordering public roads or bordering verges which border public roads.

3 *Light agricultural vehicles*

(1) A vehicle is an excepted vehicle if it is a light agricultural vehicle.

(2) In sub-paragraph (1) above "light agricultural vehicle" means a vehicle which:

- (a) has a revenue weight not exceeding 1,000 kilograms,
- (b) is designed and constructed so as to seat only the driver,
- (c) is designed and constructed primarily for use otherwise than on roads, and
- (d) is used solely for purposes relating to agriculture, horticulture or forestry.

(3) In sub paragraph (2)(a) above "revenue weight" has the meaning given by section 60A of the Vehicle Excise and Registration Act 1994.

4 *Agricultural engines*

An agricultural engine is an excepted vehicle.

5 Vehicles used between different parts of the land

A vehicle is an excepted vehicle if:

- (a) it is used only for purposes relating to agriculture, horticulture or forestry;
- (b) it is used on public roads only in passing between different areas of land occupied by the same person; and
- (c) the distance it travels on public roads in passing between any two such areas does not exceed 1.5 kilometres; and

6 Mowing machines

A mowing machine is an excepted vehicle.

7 Snow clearing vehicles

A vehicle is an excepted vehicle when it is:

- (a) being used, or
- (b) going to or from the place where it is to be or has been used,

for the purpose of clearing snow from public roads by means of a snow plough or similar device (whether or not forming part of the vehicle).

8 Gritters

A vehicle is an excepted vehicle if it is constructed or adapted, and used, solely for the conveyance of machinery for spreading material on roads to deal with frost, ice or snow (with or without articles or material used for the purposes of the machinery).

9 Mobile cranes

(1) A mobile crane is an excepted vehicle

(2) In sub-paragraph (1) above "mobile crane" means a vehicle which is designed and constructed as a mobile crane and which:

- (a) is used on public roads only as a crane in connection with work carried on at a site in the immediate vicinity or for the purpose of proceeding to and from a place where it is to be or has been used as a crane, and
- (b) when so proceeding does not carry any load except such as is necessary for its propulsion or equipment.

10 Digging machines

(1) A digging machine is an excepted vehicle.

(2) In sub-paragraph (1) above "digging machine" means a vehicle which is designed, constructed and used for the purpose of trench digging, or any kind of excavating or shovelling work, and which:

(a) is used on public roads only for that purpose or for the purpose of proceeding to and from the place where it is to be or has been used for that purpose, and

(b) when so proceeding does not carry any load except such as is necessary for its propulsion or equipment.

11 Works trucks

(1) A works truck is an excepted vehicle.

(2) In sub-paragraph (1) above "works truck" means a goods vehicle which is designed for use in private premises and is used on public road only:

(a) for carrying goods between private premises and a vehicle on a road within one kilometre of those premises,

(b) in passing from one part of private premises to another,

(c) in passing between private premises and other private premises in a case where the premises are within one kilometre of each other, or

(d) in connection with road works at the site of the works or within one kilometre of the site of the works.

(3) In sub-paragraph (2) above "goods vehicle" means a vehicle constructed or adapted for use and used for the conveyance of goods or burden of any description, whether in the course of trade or not.

12 Road construction vehicles

(1) A vehicle is an excepted if it is:

(a) a road construction vehicle, and

(b) used or kept solely for the conveyance of built in road construction machinery (with or without articles or material used for the purposes of the machinery).

(2) In sub paragraph (1) above "road construction vehicle" means a vehicle:

(a) which is constructed or adapted for use for the conveyance of built-in road construction machinery, and

(b) which is not constructed or adapted for the conveyance of any other load except articles and material used for the purposes of such machinery.

(3) In sub-paragraphs (1) and (2) above "built-in road construction machinery" in relation to a vehicle means road construction machinery built in as part of, or permanently attached to, the vehicle.

(4) In sub-paragraph (3) above "road construction machinery" means a machine or device suitable for use for the construction or repair of roads and used for no purpose other than the construction or repair of roads.

13 Road rollers

A road roller is an excepted vehicle.

14 Interpretation

In this schedule "public road" means a road which is repairable at the public expense.

Annex D

Numbers of excepted vehicles

The only available guide to numbers of excepted vehicles comes from the DVLA database. The number of Special Vehicles and VED exempt vehicles in former special concessionary classes that correspond to excepted vehicle categories is given in table below.

Table: Numbers of Special and Special Concessionary Vehicles

Special Vehicles	49,961
Special Concessionary Vehicles	
Agricultural Machine	250,028
Mowing Machine	8,824
Gritter	2,781
Snow Plough	778

There are some differences in the definitions for mobile cranes, digging machines and works trucks, and the special vehicles class also includes mobile pumping machines and some other types vehicle not entitled to red diesel.

There is no VED equivalent to the excepted vehicle road construction vehicle category, so numbers of these are unknown. The special vehicle category only applies to vehicles with a plated weight of less than 3.5 tonnes, so excepted vehicles in equivalent categories will not appear in these categories.

The VED Evasion Survey in 2002 estimated that evasion amongst Special and Special Concessionary Vehicles was running at 34.46%, most of this evasion being in respect of tractors. Tractors are of course now exempt from payment of duty, but still require a VED licence.

ANNEX E: Photographs

Vehicles that can use red diesel



Agricultural tractor



Road construction vehicle



Digging machine



Road construction vehicle

Vehicles that must use road diesel



General haulage vehicle



Heavy goods vehicle



Heavy goods vehicle



Road Sweepers

Heavy goods vehicle