The Use of Red Diesel for Forestry Purposes

Background

As part of the "Review of Timber Haulage and Forest Roads" Forestry Civil Engineering (FCE) and Scottish Enterprise researched the law relating to the use of red diesel. They had protracted correspondence with Driver and Vehicle Licensing Agency (DVLA) and Customs & Excise (C&E) and arranged a joint meeting in November 2003 to look at the use of red diesel for forestry purposes.

Summary of Legal Position

In order to use red diesel vehicles must satisfy two different but related sets of criteria:

1. the vehicles must fall within the definition of an "Exempt Vehicle" as described in the Vehicle Excise and Registration Act 1994 ("the 1994 Act"); and

2. the vehicles must fall within the definition of an "Excepted Vehicle" as described in the Hydrocarbon Oil Duties Act 1979 ("the 1979 Act").

DVLA work to the first set of criteria and C&E to the second set. There are several categories of Exempt Vehicle in the 1994 Act and several categories of Excepted Vehicle under the 1979 Act and some of these overlap. However C&E will generally defer to DVLA's decision over the status of a vehicle.

Of particular interest to forest use is a category headed “Vehicles Used between Different Parts of Land”. This appears both in the 1994 and the 1979 Act and is the same in both. Thus a vehicle is an Exempt Vehicle under the 1994 Act and an Excepted Vehicle under the 1979 Act 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 such two areas does not exceed 1.5 kilometres.

In the 1994 Act the definition of "Public Road" is contained in Section 62(1) which in turn refers to the Road Scotland Act 1984 ("the 1984 Act").

Section 151 of the 1984 Act defines a public road as "a road which a Roads Authority have a duty to maintain". Clearly the Roads Authority do not have any obligation to maintain forest roads and our legal advisers are of the view that they are not public roads as defined in the 1984 Act.

In the 1979 Act "Public Road" means a road which is repairable at the public expense. Our contention that the cost of maintaining forest roads is met from income derived from the sale of timber and not directly from the public purse was accepted by DVLA.

Implications for Forest Industry

Looking at the 3 criteria in more detail:

(a) it *is used* only for purposes relating to agriculture, horticulture or forestry;

It is not the type or construction of a vehicle but its use which influence this criteria. For instance a lorry which is used for delivering different materials to many end users would need to be licensed in the HGV category but DVLA confirmed that a lorry dedicated to forestry purposes could have a restricted license if it met the other criteria. (Vehicles used solely on private land do not need any form of license).

(b) it is used on public roads only in passing *between different* areas of land *occupied by* the same person;

Quoting from a letter from DVLA dated 20 August 2003: "Occupation of the land is a matter of fact and degree as to whether a person occupies. The occupant need not necessarily be the owner, occupation occurs where there is a sufficient measure of control. If a contractor has exclusive use of a piece of land, he may be considered the occupier of that land, irrespective of legal title. For the purposes of an exempt vehicle, each piece of land must be controlled by the same individual/organisation, hence those occupied by the Forestry Commission would be applicable. DVLA will accept a declaration in the first instance, but may require further information if the vehicle was to be challenged."

At the meeting DVLA gave a further explanation of the meaning of the words "occupied by the same person". If the same contractor was extracting timber on FC land and private land these two different areas would qualify as being "occupied by the same person". However if different contractors were being used on FC land and adjacent private land these areas would not qualify and a vehicle with a Restricted Use Licence, and using red diesel, passing between them would be in breach of the regulations. For example, if FC entered in to a formal agreement with a land owner giving FC rights of access over that land with perhaps an obligation to contribute to the maintenance of the route used that would bring these areas within the definition and allow vehicles to move from FC land through third party owned land and on to other FC land all within the terms of the legislation.

(c) the *distance* it travels *on public* roads *in* passing between any such two areas *does* not *exceed* 1.5 kilometres.

DVLA expands on the definition in their form V355/1 (para. 14.1) by adding "each trip" :-

Limited Use applies to a vehicle used solely in connection with agriculture, horticulture or forestry and its road travel does not exceed 1.5km each trip between different areas of land occupied by the same person.

DVLA clarified this in their letter dated 20 August 2003:-

The words "each trip" clarify that the vehicle may be used for 1.5km for every journey between two pieces of land occupied by the same person. This is to make a distinction between that position and that in which the vehicle could only travel a total of 1.5km in, for example, the span of its existence, or licensing in this taxation class.

If a vehicle were to travel for a 50 mile journey, interspersing the journey with private land occupied by the Forestry Commission, so that between each piece of land, the vehicle did not travel more than 1.5km, then the vehicle may still be registered in the exempt class. However, if at any point the vehicle exceeded 1.5km, or crossed private land occupied by individuals other than the Forestry Commission, it would be in contravention of the Vehicle Excise and Registration Act (VERA) legislation.

If the haulage is being contracted out and the vehicle is being used for any purpose other than in relation to forestry activities, then it would not be permitted to license in the limited use taxation class. However, if the vehicle was to be used solely for the purpose described, then the subcontractor could also license it in the exempt category. As soon as the use of the vehicle changes, it must be re-licensed in the relevant taxation class.

Conclusions

Lorries used for forestry purposes, meeting the 3 criteria at the start of this paper, come within the limited license category. The requirements for not exceeding 1.5km public road use and the limitations on passing between land in the same occupation are absolute. The limit of 1.5km needs to be recognised when designing a route and the question of ownership and access rights will need to be considered.

There is no prospect of using red diesel in normal road going timber lorries. The use of twin tanks, apart from separate donkey engines, is out of the question with C&E.

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