

TimberTransportForum

delivering solutions for a growing UK harvest

**Further clarification on the use of
red diesel
for
forest machine vehicles**

Introduction

This note provides responses to Frequently Asked Questions relating to the use of Red Diesel in forestry situations.

The advice should be considered alongside the following documents which help to clarify the legislation on the use of Red Diesel.

- In 2006 HMRC amended the list of vehicles allowed to use red diesel and, in April 2009, revised and reissued [Notice 75 - Fuel for road vehicles](#). This provides the formal guidance on red diesel use.
- In 2008, the Confederation of Forest Industries (ConFor), the National Association of Agricultural Contractors and the NFU worked with the DVLA and HMRC to produce a **Memorandum of Agreement in Respect of the use of Agricultural Vehicles on the Road** to clarify the situations in which red diesel can be used on the public road. The Memorandum is included as an appendix to Notice 75. At the same time a set of responses to [Frequently Asked Questions](#) was produced which set out various scenarios relating to forestry and agriculture.
- In July 2009 The Association for Public Service Excellence produced a briefing paper entitled [‘Red diesel – can you use it?’](#) providing guidance on the use of red diesel for the amenity sector.
- In July 2010 the NFU released a statement regarding the use of red diesel at agricultural shows. The statement is attached as an Annex to this note

The 2008 Memorandum of Agreement and associated FAQ highlighted a number of agricultural situations where red diesel could be used. These in turn prompted further questions as to how a comparable forestry situation would be viewed. The Timber Transport Forum collated a number of questions raised by the industry which are set out in this note.

The responses have been provided by an expert in the field, based on the 2008 Memorandum of Agreement and with clarification from HMRC. However the responses remain an interpretation of the law.

If you are in any doubt about whether or not your vehicle or activity qualifies, contact the HMRC National Advice Service on Tel 0845 010 9000.

Question 1

Can a vehicle licensed for use as a mobile crane carry a load between different parts of land where the load is carried on the public road only when passing between different areas of land occupied by the same person where the distance does not exceed 1.5 kilometres?

Answer

No, a mobile crane cannot carry a load other than loose tools required for the operation of the equipment.

Question 2

What is the maximum weight that can be carried by an agricultural machine? Is this different if it is towing a trailer?

Answer

The maximum gross vehicle weight of an agricultural motor vehicle is 24390 kg so anything attached to the vehicle must not push it above this weight. A lot of tractors nowadays have plates fitted which give the maximum gross weight of the vehicle (which may not be 24390 kg). If the vehicle is towing a trailer the total train weight of the vehicle must not exceed 24390 kg.

An agricultural tractor cannot carry a load down the road; if it did, then it would become a goods vehicle. An implement attached to an agricultural tractor is not classed as a load.

Should the vehicle be taxed as an agricultural machine, then the vehicle itself could be classified as either a Motor Tractor or a Locomotive, but again neither of these vehicles are permitted to carry a load.

Question 3

What features does a timber truck need to have to be classified as an agricultural machine ?

Answer

This is a bit of a grey area and at the end of the day it all depends upon the view of DVLA.

Under normal circumstances we would be looking at such things as:

- Power take off
- Three point linkage
- Constructed to draw or pull trailers or appliances
- Incapable by design of carrying any load other than miscellaneous items such as tools and equipment used in the propulsion of the vehicle
- Fitted with off road tyres
- Maximum speed governed to 40 mph

Prior to any work being carried out it would be best to speak to DVLA and obtain their views. **If the vehicle was used for the transportation of timber it could not be classified as an agricultural machine.**

Question 4

Does an agricultural machine require a tachograph?

Answer

Not unless the vehicle is classed as a haulage vehicle and used for a non agricultural operation.

Question 5

Is the operator of an agricultural machine subject to the Working Time Directive?

Answer

The Working Time Regulations 1998 came into force on 1st October 1998, but in doing so also brought in some exemptions, one of which relates to people engaged in agricultural operations. This exemption specifically highlights various specifications as follows:

- In Regulation 21, it refers to other special cases, and states that subject to Regulation 24 (which deals with compulsory rest periods) whenever possible, an agricultural worker is exempt from the regulations in respect of;
 - Regulation 6(1)(2) length of night work
 - Regulation 10(1) daily rest periods
 - Regulation 11(1)(2) weekly rest periods
 - Regulation 12 (1) rest breaks
 - Where the workers activities involve the need for continuity of service for production, as may be the case in relation to a number of situations, i.e. where there is a foreseeable surge of activity.
- Agricultural workers are also mentioned in Regulation 43, which states that the provisions of Schedule 2 have effect in relation to workers employed in agriculture.
 1. Except where, in the case of a worker partly employed in agriculture, different provision is made by relevant agreement -
 - (a) for the purpose of reg. 13 the leave year of a worker employed in agriculture begins on 6th. April each year or such other date as may be specified in an agricultural wages order which applies to him; and
 - (b) the dates on which leave is taken by a worker employed in agriculture shall be determined in accordance with an agricultural wages order which applies to him.

2. Where in the case referred to in paragraph 1 above, a relevant agreement makes provision different from sub - paragraph (a) or (b) of that paragraph.

(a) neither section 11 of the Agricultural Wages Act 1948 nor section 11 of the Agricultural Wages (Scotland) Act 1949 shall apply to that provision, and

(b) an employer giving effect to that provision shall not thereby be taken to have failed to comply with the requirements of an agricultural wages order.

Question 6

I want to move logs from the timber stack in my forest to the factory. Can I use a vehicle licensed as an agricultural machine and running on red diesel on the public road?

Answer.

Yes. Forestry and horticulture all come under the same umbrella as agriculture, as per the Memorandum of Agreement, so the use of the public road is accepted as being incidental to the original agricultural operation of harvesting the timber. A tractor can transport the produce to the place where it is to be processed. (HMRC).

A contractor contracted by the estate owner to undertake the harvesting operation could similarly use red diesel, however, **operator's license regulations also apply**. There is an exemption from holding an operator's license for "Hauling within 24.135 kilometres, (15 miles), of a farm or forestry estate occupied by the keeper, agricultural or woodland produce of that farm or estate." In this exemption, where it refers to 'keeper', this means the **keeper of the vehicle** which is being used. Where a contractor is being used, they are not the occupier of the farm or estate, in which case they are not exempt from the need for an operator's licence. If they do hold an operator's license it is unlikely they are driving an 'agricultural machine'.

Question 7

An estate, as part of its forestry operations, is heavily involved in the harvesting, production and delivery of firewood. The firewood is delivered to their customers, by an estate tractor and trailer (for larger loads). This delivery service forms an integral part of the operation. Can the estate tractor licensed as an agricultural machine and running on the public road, use red diesel to deliver the firewood ?

Answer

According to HMRC and the Memorandum of Agreement, where use of the public road is incidental to the **original agricultural operation of harvesting the timber**, red diesel can be used. White diesel should be used for the delivery of the firewood.

Question 8

I am an arboricultural contractor using an agricultural tractor and trailer to transport woody biomass resulting from tree work I have undertaken, to my yard (within 24 km / 15miles) for further processing to firewood. Can I use red diesel in the tractor?

Answer.

The answer to this question will depend on whether the tree work referred to can be classed as 'forestry'. HMRC were asked to clarify and their reply was as follows;

"An arboricultural contractor could be involved in forestry but to decide whether he or she can use red diesel we need to look at what sort of vehicle is being used and how it is being used. If a vehicle of a type listed in Schedule 1 of the Hydrocarbon Oil Duties Act 1979 (HODA). is used for the kind of work we expect a forester or forestry contractor to undertake, then that is a qualifying activity..... "

N.B.

The **2008 Memorandum of Agreement** contains the following answer and response:

I carry out tree surgery on public amenity land or commercial property. Can I use a tractor licensed as an agricultural machine and running on red diesel on the public road?

No, this activity is not accepted as being for the purposes of agriculture, horticulture or forestry, and is not otherwise permitted in the agricultural tractor definition.

Question 9

I am an in-forest chipping contractor. I chip forest residues and whole trees at stump into demountable bins. Can I haul these bins on the public road, to my yard for further processing, using tractors licensed as agricultural machines ?

Answer

Yes, if you are completing the whole operation, i.e. harvesting and removing but the operator's licenses restrictions will apply as in the answer to Question 6

Question 10

I buy logs already felled at stump. Can I haul these logs, on the public road, to my yard for further processing, using tractors licensed as agricultural machines ?

Answer.

No, because you are not harvesting the product, but just collecting it and transporting it back to your yard. This is classed as haulage.

Question 11

I buy logs at forest roadside. Can I haul these logs, on the public road, to my yard for further processing, using tractors licensed as agricultural machines ?

Answer.

No, for the same reason as in 10 above.

Question 12

I am a forestry contractor. Can I move my in-forest machines, licensed as agricultural machines, on the public road, from a forest site to and from my yard for repair ? Can I move them between sites, on the public road ?

Answer.

The answer to both the questions is **Yes**.

Question 13

What are the practical and operational differences between the scenarios in the two questions and answers given in the Memorandum of Agreement?

Q 7. I am a contractor employed by a forestry estate to extract felled timber along forestry roads. Can I use a tractor licensed as an agricultural machine and running on red diesel on the public road ? Answer. – Yes, the extraction of timber from the forest environment along forestry roads is considered to be integral to the operation of harvesting the timber, so **incidental** use of the public road is acceptable.

Q8. I am a contractor employed to collect timber from the outskirts of the forest for delivery to a wood shed or railhead. Can I use a tractor licensed as an agricultural machine and running on red diesel on the public road ? Answer – No, this is haulage.

Answer.

The difference between the two is that in Q7 the timber is actually being extracted from within the forest, and as **extraction has been deemed to be part of the harvesting operation** then red diesel can be used. In Q8 the timber is being collected from the edge of the forest, **an operation which could be done by a road haulage vehicle**, therefore this operation is classed as haulage.

Question 14

Is it correct to say that (from Q7 of the MoA) "Where a contractor extracts timber from the forest environment along forestry roads, incidental use (up to 24 km) by an agricultural machine on the public road, running on red diesel, is acceptable.

Answer.

Yes, if the contractor is contracted to the forestry estate undertaking the harvesting.

Question 15

A contractor extracts timber from the forest environment along forestry roads and uses an agricultural machine on the public road, running on red diesel, to haul timber from a forest to

- a pierhead (or canalside/railside loading point) x miles away along a public road
- a transhipment point on the agreed timber haulage route (where the linking public road is weak and where the council has requested that low-pressure tyred vehicles must be used) again x miles away.

Can red diesel be used and what would be the maximum value of x?

Answer

If the contractor is contracted to the forestry estate owner then red diesel can be used and there is no maximum value of x in respect of red diesel. However **operator's license regulations also apply**. There is an exemption from holding an operator's license for "Hauling within 24.135 kilometres, (15 miles), of a farm or forestry estate occupied by the keeper, agricultural or woodland produce of that farm or estate." In this exemption, where it refers to 'keeper', this means the **keeper of the vehicle** which is being used. Where a contractor is being used, they are not the occupier of the farm or estate, in which case they are not exempt from the need for an operator's licence. If they do hold an operator's license it is unlikely they are driving an 'agricultural machine'.

Question 16 (a)

The trees are felled and extracted by other contractors and stacked at roadside. We then take an agricultural tractor and forwarder to the forest and load the timber onto the pole trailer and bring it back to the farm. We then chip the timber into woodfuel/woodchip.

Answer.

This is classed as haulage and the vehicle will need to be taxed accordingly and white diesel will need to be used. (as per FAQ 8 of the MoA)

Question 16 (b) The trees are felled by other contractors and stacked in-forest. We then extract the timber using in-forest roads and the public road. We then take an

agricultural tractor and forwarder to the forest and load the timber onto the pole trailer and bring it back to the farm where we chip the timber into woodfuel /woodchip.

Answer.

The extraction of timber from the forest environment along forest roads is considered to be an integral to the operation of harvesting the timber, so incidental use of the public road using red diesel is acceptable (FAQ 7)

Question 16 (c) We deliver some of the woodchip to buyers with an agricultural tractor and bulk trailer.

Answer.

Once the timber has been processed, any further transportation must be done using white diesel.

Question 17 Because of my harvesting system I transport timber along in-forest roads to a place of temporary storage using white diesel. Can I then transport it from the temporary storage site to the factory using red diesel?

Answer

The fact that white diesel is used in the first segment does not necessarily mean that the vehicle used for the second segment cannot be fuelled on red. However, there is not enough information about the second segment to say which type of fuel should be used. That depends on many things such as:

- the amount (if any) of public road use
- the type and licensing of the vehicle
- whether the work is being carried out by the forester or a contractor.

Annex

Red diesel use at agricultural shows

NFU released this statement on the 8th July 2010

The NFU and NFU Scotland have worked with HMRC to clarify the use of red diesel at agricultural shows.

Agricultural tractors, agricultural engines, agricultural material handlers and light agricultural vehicles (as defined in HMRC Notice 75) can now also use rebated fuel in the following circumstances:

- When travelling to, from or participating in events which:
are inherently linked to an agricultural, horticultural or forestry operation, or
- educate and develop skills within the agricultural, horticultural and forestry industries, or
- promote agriculture, horticulture and forestry within the industry or to the general public.
- Neither the travel nor the participation must be for the commercial gain of the owner of the vehicle.

HMRC has stated that it does not expect travel (one way) to exceed 15 miles and the use of machinery must be in accordance with the appropriate DVLA vehicle and driver licensing guidelines.

Examples of the types of activities allowed under these rules include:

Travel to/from a local agricultural show by a farmer using machinery such as a tractor or telehandler to help set up/dismantle the showground

Travel to/from a local agricultural show by an agricultural processing vehicle being used in a demonstration at the show

Travel to/from and participation in a local ploughing contest by an agricultural tractor.

Regular commercial markets, car boot sales, music festivals are examples of activities that do not qualify under these rules.