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House of Commons
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Dear Mr Paisley,

In the Opposition Day Debate on serious organised crime on 11 March, a number of points were made by you and other speakers about the new Dow marker and the process to appoint it. You also referred to a paper on vacuum distillation which you placed in the House of Commons Library. At the time, the Government Minister committed HMRC to writing to you on the report. Therefore, I am writing to respond to the points raised during the debate and the report.

We have received a copy of the report, which we note was produced by Tracerco, a commercial company which produces the alternative marker you advocated in the debate. In the debate, you stated that the paper placed in the Library of the House goes into the profitability of distillation. I note that the report contains a short, six paragraph, section with some estimates of costs. But it does not comprehensively address issues such as the practicality of scaling up. These issues include the necessary expertise to construct and run a plant of such a size; the complexity of construction and operation; the greater risk of detection; and the potential level of fuel loss. These are the very factors that are crucial to determine whether the method would be viable.

Scientists at the Government Chemist, independent of any of the companies, support the view that vacuum distillation is not simple.

HMRC has worked closely with the Laboratory of the Government Chemist (LGC) who has many years' experience of testing for misused and laundered fuel. Their expert scientific view is that the alleged laundering method is far from simple. It is also the Laboratory's view, based on their years of experience and scientific expertise, that it is highly questionable whether it is a viable option for the laundering of fuel. The reasons they have given for this view are:

- It is costly, due to a heavy upfront investment if set up on a large scale.
- It is significantly more difficult than current techniques used to launder fuel, as it requires specialist knowledge and equipment especially if operated on a large scale.

Information is available in large print, audio tape and Braille formats.
Type Talk service prefix number – 18001

- Large scale laundering plants will be very difficult to conceal.
- It carries significant safety risks as it will involve distilling fuels at very high temperatures.

The LGC has also noted that to the best of their knowledge this method has never been used in the UK for the purpose of laundering fuel.

A number of points were also raised regarding the marker selection process that was run jointly by the UK and the Republic of Ireland. This was a fair and open process, and I stand by the rigour of it. It was run independently of any of the companies making submissions and none of the parties involved in the testing and evaluation had a vested interest in the outcome. We have disclosed a great number of documents relating to the selection process, but no candidate has made a formal challenge by way of judicial review – clearly an indication that parties believe the process was robust. I attach more details on the IMS selection process at Annex A of this letter.

HMRC remains keen to stay one step ahead of fraudsters. We are grateful for all the information from various parties received to date and have examined all of it in detail. However, I will state again that the existence of a weakness in a laboratory or small scale environment, does not mean that the marker is launderable practically on the large scale required for criminals to profit from it. We are confident that given the time and necessary resources to test, vulnerabilities could be found in all markers in a lab setting.

I contacted you prior to the debate and asked you for details of tests you have previously referred to, which we are not aware of, but I have not received a response to date. I would like to repeat my earlier request to you for any information such as dates, volumes, who sponsored the tests, and any independent analysis of the results.

In the debate you made reference to a number of laundering tests with which we are not familiar. You referenced a test in Billingham, which you stated successfully laundered 30,000 litres. The only test in Billingham we are aware of took place on 22 May 2014 and sought to distil 30 millilitres, i.e. 0.03 of one litre. Further, this test was not successful in removing all the Dow marker for technical reasons (highlighting that this is not necessarily an easy process to carry out).

You also referred to another test having taken place in Northern Ireland and a further test carried out by Professor J.J. Leahy in the Republic of Ireland. Professor J.J. Leahy has not undertaken a trial in the Republic of Ireland.

To date, the only large scale test that we are aware of is a test which was sponsored by HMRC, not any party with a commercial interest. As the Parliamentary Under-Secretary of State at the Home Office, Karen Bradley, set out in the debate this test, on 25,000 litres of diesel, confirmed our view that there is no compelling evidence for vacuum distillation as a realistic method for large scale laundering in the field.

You made a number of statements about roadside testing including whether it was a factor in the UK IMS selection process. The IMS utilised a weighted scoring system for the full range of criteria with testing cost and technology being one of the factors. Testing costs and technology were further broken down into sub-categories in the scoring, one of which was field testing capability (time, reliability, practicality). The winner was appointed on overall scoring taking all the factors into account. It was not based on any one aspect.

HMRC is making sure that we find the best and most appropriate marker testing equipment to further strengthen our testing capacity and a tender exercise to find such equipment is progressing at the moment; but notwithstanding this from day 1 of the new marker implementation our road fuel testing units (RFTUs) will be able to use their existing battery of tests to identify suspicious samples. In addition, HMRCs testing is increasingly risk targeted, upstream and aimed at retail sites, storage depots and the like. Further, the new HMRC

contract for forensics testing, which is to be tendered for shortly, will have a requirement to have at least one 'partner' forensic site in each of the 5 RFTU regions. This will allow same day turn around on the laboratory-condition tests that underpin our roadside programme.

You queried why the Statutory Instrument introducing the Dow marker states the chemical compound. This is necessary to compel the addition of the exact chemical compound which HMRC requires to be added to rebated fuel. It is this chemical compound (along with the other markers required by legislation to be added) that HMRC will test fuel for in order to deliver its strategy for detecting and prosecuting fuel fraudsters. The current UK markers were similarly identified in the previous version of the marker regulations.

You also referred to Nicky Morgan letter to NIAC Chair Laurence Robertson 9 July 2014. Nicky Morgan's letter, which was sent to update the Committee chair as courtesy, did ask that the information be treated in confidence as any information regarding theoretical weaknesses could alert fraudsters. At the time HMRC had not concluded all its tests of the viability of the method, but even if we had there is no reason to put any such information proactively into the public domain.

A point was also raised regarding the fact that a HMRC official turned down an invitation to observe a Brazilian marker and its operation in Brazil. HMRC gets a great many invitations and the invitation to Brazil was declined under normal procedure. HMRC ran a full, open, free and fair process to identify the best marker for UK conditions, and all marker producers had the full opportunity to submit all appropriate markers to be evaluated.

I also wanted to raise the matter of prosecutions. In your speech you voiced your view that the level of prosecutions is woeful, stating that it was zero. This is incorrect. In fact, in Northern Ireland there have in fact been 33 prosecutions for fuel fraud in the past 4 years (2011-/12 – 2014/15), 6 of those in the current year.

Finally, during the debate, you referred to filling stations who the community see selling illegal fuel. I would ask you to provide me with any information and to advise any of your constituents who have any information regarding such activity to contact HMRC's Tax Evasion Hotline on 0800 788 887 to provide the relevant details so the Department can follow up.

I would conclude by highlighting that the new marker coming in on 1 April represents a great improvement and strengthening of our defences against fuel fraud. I am copying this letter to Dr McCrea and the Exchequer Secretary, the latter who will place a copy of it the Library of the House.

Yours sincerely



JIM HARRA
Director General, Business Tax

Selection Process

A Memorandum of Understanding (MOU) was signed by HMRC and the Revenue Commissioners in the Republic of Ireland in May 2012 on a joint project intended to identify a new fiscal fuel marker. Both authorities sought to introduce improved standards in the marking of rebated oil in their respective jurisdictions and wished to identify a more effective marker(s) or technology for marking and subsequently identifying rebated fuel. A joint Invitation to Make Submissions (IMS) was agreed and published on 28 June 2012.

A briefing session was held at LGC premises for prospective IMS applicants in July 2012. The briefing was given by representatives from the Revenue Authorities, LGC and the Irish State Laboratory. The briefing explained the circumstances leading to the IMS, current markers, known laundering methods and gave an indicative timetable. For further information HMRC also invited prospective applicants to attend demonstrations by their mobile Road Fuel Testing Unit in Belfast. These demonstrations were very well-received, giving an insight into the difficulty faced by, and the professionalism of, HMRC's front line staff.

Further Addenda were published in September and November 2012 in answer to questions raised by potential applicants.

An Evaluation Group (EG) with representatives from the Revenue Authorities and the Laboratories from both jurisdictions was established to carry out the evaluation of submissions in accordance with the process as set out in the IMS. The EG reported to a Project Board, which consisted of senior representatives from both Revenue Authorities.

Evaluation Methodology

The process was designed to seek proposals for marking rebated oil, and any subsequent detection of misused rebated oil. The process allowed for, and included dialogue with applicants, who were given the opportunity to clarify aspects of their submissions where appropriate. Details of the evaluation process are set out below.

Potential applicants were advised that this process does not fall within the scope of EU or national Procurement Law in accordance with Directive 2004/18/EC or Directive 2004/17/EC.

Evaluation Procedures Manual

The Project Board approved an Evaluation Procedures Manual in early November 2012. This manual set out the procedures to be followed in relation to the evaluation process as set out in the IMS. Regular Evaluation Group meetings were held which were minuted. A total of 12 submissions, containing 23 markers, were received. Following an initial review carried out on 5 December 2012, 10 submissions with proposals for 22 markers, went forward to the Preliminary Evaluation.

Evaluation Process

The Preliminary Evaluation concluded on 14 October.

IMS: Final Evaluation

The submissions were assessed and scored based on the following Award Criteria as specified in the published IMS:

Resistance of the Product to removal	300
Pricing and model of supply	200
Testing Costs and Technology	100
Total Marks	600

Resistance of Product to removal (Launderability) (300 marks)

When the labs in UK and the Republic of Ireland completed a first round of launderability testing, this revealed a group of front runners that were more resistant to laundering. Scientific experts then put these through a second round of tougher tests. This involved trying to locate specific vulnerabilities, using known current laundering techniques and those that presented practical and realistic new methods. A number of methods which did not present credible threats, including vacuum distillation, were not tested for.

The first round of launderability tests included resistance to volatility, several adsorption methods, acid, heat and light. Markers that were resistant to these processes were taken to a second round of tests based on the chemical composition of the markers.

Pricing and Model of Supply (200 marks)

Applicants had to provide pricing information and their supply model in their original submission. This was also evaluated and involved seeking clarification or further information from several applicants.

In addition to the published scoring information, the available marks under this criteria were assigned as follows:

- Price of the marker using a formula agreed by economists in both countries (120 marks)
- Capacity of the applicant to supply the product to market (20 marks)
- Level of implementation costs for industry (20 marks)
- Length of lead-in time for implementation of proposal (20 marks)
- Viability of proposed model of supply (20 marks)

Testing Costs and Technology (100 marks)

The companies also provided details on the equipment that the Revenue Authorities would require to test for their marker. The additional cost of testing equipment and its suitability for roadside testing were taken into account.

In addition to the published scoring information, the available marks under this criterion were assigned as follows:

- Suitability for judicial proceedings (20 marks)
- Documentation for Methods of Analysis (20 marks)
- Validation of methods of analysis (20 marks)
- Cost of methods of analysis (20 marks)

- Field testing capability (time, reliability, practicality) (20 marks)

Following the completion of the Final Evaluation, HMRC carried out further testing of the preferred marker.

Trial Laundering Plant

The laboratory testing involved very small proportions of proposed markers in small amounts of fuel. Subsequently, 4 markers that passed the second round of launderability tests, including the preferred marker, were then tested in a simulated laundering plant constructed and run by the Revenue Commissioners in Ireland (in close liaison with HMRC and LGC). This sought to launder the markers on a scale to mimic adsorption methods employed by criminal gangs and served as a final check that the markers which have performed best in the laboratory performed as well in the field.

Background checks

Finally, HMRC undertook compliance checks to ensure the preferred applicant was tax compliant in all areas.

Following the full results of the testing and consideration of all the information provided, the Evaluation Group made a recommendation to the Project Board.

Outcome

At the end of the overall evaluation, one marker achieved the highest score overall. Another marker with a lower total score still scored well on the launderability. On this basis the Evaluation Group recommended that either the winning marker alone be appointed, or the winning marker and the runner-up in combination for added security, depending on the requirements of the jurisdictions. Both jurisdictions decided to appoint the highest scoring marker, which represents a significant improvement on current marking technology.

Notifying Applicants

Letters were sent to the successful and unsuccessful companies.

Prior to the Announcement of the chosen marker in February 2014, the unsuccessful applicants were given the opportunity for face to face feedback meetings with the Evaluation Group. Most of the applicants took advantage of this several expressed their thanks to the Revenue Authorities for the help given in the development of their products.