

*Draft Order laid before Parliament under sections 124(5) and 192(3) of the Energy Act 2004, and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2011 No. 0000**

**TRANSPORT**

**ENERGY**

**SUSTAINABLE AND RENEWABLE FUELS**

**The Renewable Transport Fuel Obligations (Amendment) Order  
2011**

*Made - - - - XXth December 2011*

*Coming into force in accordance with article 1*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 124, 125A(1), 125B(1), 125C(1) and (5)(e), 126(1) to (5), 127, 128, 129(1) to (3), 130(2) and (5), 132(1) and 192(4) of the Energy Act 2004(a) (“the 2004 Act”) and by section 2(2) of, and paragraph 1A(1) of Schedule 2 to, the European Communities Act 1972(b) (“the 1972 Act”).

The Secretary of State is a Minister designated(c) for the purposes of section 2(2) of the 1972 Act in relation to energy and energy sources.

This Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for any reference in this Order to Annex V to Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources(d) to be construed as a reference to that Annex as amended from time to time.

In accordance with section 124(4) of the 2004 Act, the Secretary of State has consulted such persons appearing to him to represent persons whose interests will be affected by this Order, and such other persons, as he considers appropriate.

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- (a) 2004 c.20; sections 125A(1), 125B(1) and 125C(1) and (5)(e) were inserted by the Climate Change Act 2008 (c.27), section 78, Schedule 7, paragraphs 1 and 2; section 126(5) was inserted by the Climate Change Act 2008, section 78, Schedule 7, paragraphs 1 and 3; section 128(6) to (10) was inserted by the Climate Change Act 2008, section 78, Schedule 7, paragraphs 1 and 4.
- (b) 1972 c.68; section 2(2) of the 1972 Act was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7); paragraph 1A(1) of Schedule 2 to the 1972 Act was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and subsequently amended by section 3(3) and Part 1 of the Schedule to the European Union (Amendment) Act 2008.
- (c) S.I. 2010/761.
- (d) OJ No L 140, 5.6.2009, p16.

A draft of this Order was laid before Parliament in accordance with sections 124(5) and 192(3) of the 2004 Act and paragraph 2(2) of Schedule 2 to the 1972 Act and approved by a resolution of each House.

### **Citation and commencement**

1. This Order may be cited as the Renewable Transport Fuel Obligations (Amendment) Order 2011 and comes into force on the first day which is the 15th of a month after the day on which the Order is made.

### **Amendment of the Renewable Transport Fuel Obligations Order 2007**

2. The Renewable Transport Fuel Obligations Order 2007(a) is amended as follows.

#### **Amendment of article 2 (interpretation)**

3.—(1) In article 2(1), in the definition of “connected person”, for “section 839 of the Income and Corporation Taxes Act 1988” substitute “section 1122 of the Corporation Tax Act 2010(b)”.

(2) Insert the following definitions in article 2(1) at the appropriate alphabetical positions—

““the 2011 Order” means the Renewable Transport Fuel Obligations (Amendment) Order 2011(c);”

““additional sustainability information” means the information specified in Article 1 of Commission Decision 2011/13/EU of 12 January 2011 on certain types of information about biofuels and bioliquids to be submitted by economic operators to Member States(d);”

““the cross compliance requirements” means—

(a) the statutory management requirements—

(i) under the heading ‘Environment’ in point A of Annex II to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003(e) (“the CAP regulation”); and

(ii) in row 9 of the table in that Annex; and

(b) the minimum requirements for good agricultural and environmental condition defined pursuant to Article 6(1) of the CAP regulation;”

““the directive” means Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC(f), and a reference in this Order to Annex V to the directive is a reference to that Annex as amended from time to time;”

““ISAE 3000” means the International Standard on Assurance Engagements 3000(g) promulgated by the International Federation of Accountants;”

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(a) S.I. 2007/3072, amended by the Finance Act 2008, section 13(10) and S.I. 2009/843 and 2011/493.

(b) 2010 c.4.

(c) S.I. 2011/

(d) OJ No L 9, 13.1.2011, p11.

(e) OJ No L 30, 31.1.2009, p16.

(f) OJ No L 140, 5.6.2009, p16.

(g) The International Standard on Assurance Engagements 3000 is set out from page 292 of Part II of the publication entitled “Handbook of International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements” (2010 edition) (ISBN 978-1-60815-052-6) published by the International Federation of Accountants. Copies can be obtained from [www.ifac.org](http://www.ifac.org).

“the Motor Fuel Regulations” means the Motor Fuel (Composition and Content) Regulations 1999(a);”

“notional volume” means, in relation to an amount of renewable transport fuel, the notional volume of that amount of renewable transport fuel determined in accordance with article 5(4A)(b);”

“relevant feedstock” means—

- (a) products, wastes or residues of biological origin from—
  - (i) agriculture (including both vegetal and animal substances);
  - (ii) forestry;
  - (iii) related industries including fisheries and aquaculture;

(b) industrial or municipal waste of biological origin;”

“renewable energy obligation” has the same meaning as in the directive(c);”

“sustainability criteria” means the criteria set out in the Schedule(d);”

“sustainable feedstock” means a relevant feedstock which meets the criteria set out in paragraphs 7 to 9 of the Schedule (land criteria);”

“sustainable wastes” means relevant feedstocks which are—

- (a) wastes or residues other than residues from agriculture, aquaculture, fisheries or forestry; or
- (b) wastes, residues, non-food cellulosic material or ligno-cellulosic material which meet the criteria set out in paragraphs 7 to 9 of the Schedule (land criteria);”

“verifier’s assurance report” means a report which meets the requirements of article 16A(e);”.

(3) In article 2(2)(a), for “activities” substitute “industries including fisheries and aquaculture”.

#### **Amendment of article 3 (definitions of fuels and fuel products)**

4.—(1) After article 3(2A), insert—

“(2B) “Diesel” has the meaning given to “diesel fuel” in regulation 2 of the Motor Fuel Regulations(f).”

(2) For article 3(5), substitute—

“(5) “Hydrocarbon oil” means any hydrocarbon fuel which, at 15 degrees C and under a pressure of 101,325 Pa, is a liquid or a gas.”

(3) After article 3(7), insert—

“(7A) “Partially renewable transport fuel” means renewable transport fuel other than wholly renewable transport fuel.

(7B) “Petrol” has the same meaning as in regulation 2 of the Motor Fuel Regulations(g).”

(4) For article 3(10), substitute—

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(a) S.I. 1999/3107; relevant amending instruments are S.I. 2003/3078 and 2010/3035.

(b) Article 5 is amended by article 7 of this Order.

(c) Article 2(l).

(d) The Schedule is inserted by article 23 of this Order.

(e) Article 16A is inserted by article 14 of this Order.

(f) Regulation 2 of the Motor Fuel Regulations defines “diesel fuel” to mean the same as “diesel fuels” as that phrase is defined in article 2(2) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels (OJ No L 350, 28.12.1998, p58) as last amended by Commission Directive 2011/63/EU (OJ No L 147, 2.6.2011, p15).

(g) Regulation 2 of the Motor Fuel Regulations defines “petrol” to have the same meaning as in article 2(1) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels (OJ No L 350, 28.12.1998, p58) as last amended by Commission Directive 2011/63/EU (OJ No L 147, 2.6.2011, p15).

“(10) “Relevant hydrocarbon oil” means hydrocarbon oil which—

- (a) is chargeable to a duty of excise under the 1979 Act;
- (b) is for use as fuel in road vehicles; and
- (c) falls within one of the following categories—
  - (i) petrol,
  - (ii) diesel,
  - (iii) renewable transport fuel,

but shall not include detergents, cetane improvers, lubricity improvers, viscosity improvers, oxidation inhibitors, gum inhibitors, anti-corrosive preparations and like substances intended for use as fuel additives.”

(5) For article 3(11) and (12), substitute—

“(11) “Wholly renewable transport fuel” means renewable transport fuel which is produced wholly from a relevant feedstock.

(12) For the purposes of paragraph (d) of the definition of “renewable transport fuel” in section 132(1) of the 2004 Act, solid, liquid or gaseous fuel which—

- (a) is produced wholly or partly from a relevant feedstock, and
  - (b) does not fall within paragraph (a), (b) or (c) of that definition,
- is designated as renewable transport fuel.”

(6) Omit articles 3(13) and (14).

#### **Amendment of article 4 (the renewable transport fuel obligation)**

5.—(1) For article 4(3)(b), substitute—

“(b) the “specified date” means 29th November (or the next working day after 29th November, if 29th November is not a working day) following the end of the obligation period in question; and”.

(2) For article 4(4), substitute—

“(4) For the purposes of section 124(2) of the 2004 Act and this Order, “the specified amount” of renewable transport fuel is determined in accordance with paragraphs (5) and (6).”

(3) After article 4(4), insert—

“(5) The specified amount of renewable transport fuel for the obligation period beginning with 15th April 2011 is determined as follows—

- (a) calculate in accordance with article 26 the volume of relevant hydrocarbon oil which the supplier has supplied at or for delivery to places in the United Kingdom during the period beginning with 15th April 2011 and ending with the day before the 2011 Order comes into force;
- (b) calculate the notional amount of the relevant hydrocarbon oil which the supplier has supplied at or for delivery to places in the United Kingdom during the period beginning with the day on which the 2011 Order comes into force and ending with 14th April 2012;
- (c) in any case where the sum of the amount calculated in accordance with sub-paragraph (a) and the amount calculated in accordance with sub-paragraph (b) is less than 10 million litres, deduct the first 450,000 litres of that amount;
- (d) the specified amount is an amount equal to 4.1667% of the sum of the amounts calculated under sub-paragraphs (a) and (b), adjusted in accordance with sub-paragraph (c) if applicable.

(6) The specified amount of renewable transport fuel for any other obligation period is determined as follows—

- (a) calculate the notional amount of the relevant hydrocarbon oil which the supplier has supplied at or for delivery to places in the United Kingdom during the obligation period in question;
- (b) in any case where that notional amount is less than 10 million litres, deduct the first 450,000 litres of that amount; and
- (c) in relation to the amount calculated in accordance with sub-paragraphs (a) and (b) (“the obligated amount”)—
  - (i) for the obligation period beginning with 15th April 2012, the specified amount is an amount equal to 4.7120% of the obligated amount; and
  - (ii) for each subsequent obligation period, the specified amount is an amount equal to 5.2632% of the obligated amount.

(7) For the purposes of paragraphs (5)(b) and (6)(a), the notional amount of the relevant hydrocarbon oil which the supplier has supplied at or for delivery to places in the United Kingdom during any period is determined in accordance with the following formula—

$$F_N = H_A - (E \times S)$$

where—

$F_N$  is that notional amount of relevant hydrocarbon oil;

$H_A$  is the total amount of relevant hydrocarbon oil which was owned by the supplier at the time when the requirement to pay the duty of excise with which that relevant hydrocarbon oil is chargeable took effect and was supplied at or for delivery to places in the United Kingdom during that period;

$E$  is the amount of the eligible oil; and

$S$  is the percentage of the volume of the eligible oil which is attributable to sustainable feedstocks.

(8) For the purposes of paragraph (7)—

- (a) “the eligible oil” means the renewable transport fuel which—
  - (i) the supplier supplied at or for delivery to places in the United Kingdom during the period in question;
  - (ii) is for use as fuel in road vehicles;
  - (iii) meets the sustainability criteria; and
  - (iv) was owned by the supplier at the time when the requirement to pay the duty of excise with which that renewable transport fuel is chargeable took effect;
- (b) to the extent that the eligible oil is bio-ethyl-tertiary-butyl-ether,  $S$  is deemed to be 47% in respect of that portion of the eligible oil;
- (c) to the extent that the eligible oil is bio-methyl-tertiary-butyl-ether,  $S$  is deemed to be 36% in respect of that portion of the eligible oil; and
- (d) to the extent that the eligible oil is fatty-acid-methyl-ester derived from relevant feedstocks and methanol derived from fossil fuel,  $S$  is deemed to be 100% in respect of that portion of the eligible oil.

(9) For the purposes of this article, one kilogram of gaseous relevant hydrocarbon oil must be treated as equivalent to one litre of relevant hydrocarbon oil.”

### **Duty of the Secretary of State in respect of the directive**

6. After article 4, insert—

### **“Duty of the Secretary of State in respect of the directive**

**4A.**—(1) The Secretary of State must keep under review whether further steps need to be taken in order to meet the requirements of the directive in respect of transport.

(2) Without prejudice to the generality of paragraph (1), the Secretary of State must keep under review—

- (a) whether the requirements of the directive in respect of transport will be met if no changes are made to the way in which the specified amount is determined in respect of the obligation periods<sup>(a)</sup> beginning on or after 15th April 2014;
- (b) the extent to which relevant feedstocks from agriculture cultivated in the United Kingdom and used for the production of renewable transport fuel have been obtained in accordance with the cross compliance requirements.

(3) The Secretary of State must determine whether steps need to be taken under paragraph (1).”

### **Amendment of article 5 (determinations of amounts of transport fuel)**

**7.**—(1) For article 5(1), substitute—

“(1) Where, in relation to an amount of transport fuel, it is shown that a person owns the fuel at the time when the requirement to pay the duty of excise with which the fuel is chargeable takes effect, it is to be presumed that that amount of fuel is supplied by that person at or for delivery to places in the United Kingdom at that time. This presumption shall only be displaced if the Administrator is satisfied that the fuel will not be supplied at or for delivery to places in the United Kingdom.”

(2) For article 5(2)(a) and (b), substitute—

- “(a) it is for use as fuel in road vehicles,
- (b) it meets the sustainability criteria, and”.

(3) Omit article 5(3).

(4) After article 5(4), insert—

“(4A) For the purposes of discharging a person’s renewable transport fuel obligation<sup>(b)</sup> for an obligation period, the volume of an amount of renewable transport fuel is deemed to be the notional volume determined in accordance with the following formula—

$$R_N = R_A \times (S + W)$$

where—

$R_N$  is the notional volume;

$R_A$  is the actual volume of the amount of renewable transport fuel which was owned by the supplier at the time when the requirement to pay the duty of excise with which that renewable transport fuel is chargeable took effect and was supplied at or for delivery to places in the United Kingdom during that period;

$S$  is the percentage of the volume of the amount of renewable transport fuel which is attributable to sustainable feedstocks;

$W$  is the percentage of the volume of the amount of renewable transport fuel which is attributable to sustainable wastes.

(4B) For the purposes of paragraph (4A)—

- (a) to the extent that the renewable transport fuel is bio-ethyl-tertiary-butyl-ether,  $S$  is deemed to be 47% in respect of that portion of the renewable transport fuel;

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(a) “Obligation period” is defined in article 2(1) of the Renewable Transport Fuel Obligations Order 2007.

(b) “Renewable transport fuel obligation” is defined in section 124(1) of the Energy Act 2004.

- (b) to the extent that the renewable transport fuel is bio-methyl-tertiary-butyl-ether, S is deemed to be 36% in respect of that portion of the renewable transport fuel; and
- (c) to the extent that the renewable transport fuel is fatty-acid-methyl-ester derived from relevant feedstocks and methanol derived from fossil fuel, S is deemed to be 100% in respect of that portion of the renewable transport fuel.”

(5) For article 5(5), substitute—

“(5) For the purposes of this article, one kilogram of gaseous renewable transport fuel must be treated as equivalent to one litre of liquid renewable transport fuel.”

(6) For article 5(6), substitute—

“(6) Where fossil fuel is blended with other fuel, the fossil fuel element of the blend is to be disregarded for the purposes of—

- (a) the definitions of “partially renewable fuel” and “wholly renewable transport fuel” in article 3(7A) and (11);
- (b) calculating the notional volume of an amount of renewable transport fuel in accordance with paragraph (4A); and
- (c) determining whether an amount of renewable transport fuel meets the sustainability criteria.”

#### **Amendment of article 12 (duty to require information from obligated suppliers)**

**8.**—(1) For articles 12(1) and (2), substitute—

“(1) The Administrator must, by the specified date referred to in article 4(3)(b), impose a requirement on an obligated supplier<sup>(a)</sup>, and on any non-obligated supplier who applies for RTF certificates, to provide the Administrator with—

- (a) information as to—
  - (i) whether the supplier has supplied any relevant hydrocarbon oil at or for delivery to places in the United Kingdom during each relevant period;
  - (ii) whether the supplier has supplied any renewable transport fuel at or for delivery to places in the United Kingdom during each relevant period;
  - (iii) the amount of any relevant hydrocarbon oil which has been supplied by the supplier at or for delivery to places in the United Kingdom, or received by the supplier from another transport fuel supplier<sup>(b)</sup> at places in the United Kingdom, during each relevant period;
  - (iv) the types of any relevant hydrocarbon oil supplied or received as described in paragraph (iii) during each relevant period and, in respect of each type—
    - (aa) the volume supplied;
    - (bb) the energy content; and
    - (cc) in the case of partially renewable transport fuel, the volume attributable to relevant feedstocks;
  - (v) the compliance of any renewable transport fuel supplied, but excluding the volume of such fuel which is not attributable to relevant feedstocks, with the sustainability criteria;
  - (vi) the volume content of any renewable transport fuel supplied, but excluding the volume of such fuel which is not attributable to relevant feedstocks, which is attributable to—
    - (aa) sustainable feedstocks;
    - (bb) sustainable wastes; and

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(a) “Obligated supplier” is defined in article 2(1) of the Renewable Transport Fuel Obligations Order 2007.

(b) “Transport fuel supplier” is defined in section 132(1) of the Energy Act 2004.

- (b) the additional sustainability information in respect of any renewable transport fuel supplied, but excluding the volume of such fuel which is not attributable to relevant feedstocks.

(2) In paragraph (1) a “relevant period” means such period as the Administrator may notify to the obligated supplier for the purposes of that paragraph or, in the absence of such notice, a period during an obligation period in respect of which information has not been provided by the supplier under this article and which—

- (a) begins with 15th December and ends with the 31st December immediately following,
- (b) begins with 1st January and ends with the 14th January immediately following, or
- (c) begins with the 15th day of any month other than December and ends with the 14th day of the immediately following month.”

(2) In article 12(4)(a), omit “to the best of the supplier’s knowledge and belief”.

(3) For article 12(6), substitute—

“(6) The Administrator may impose requirements as to—

- (a) the form in which the evidence must be produced,
- (b) the methodology to be used in compiling and producing the evidence, and
- (c) the period within which the evidence must be produced.”

(4) After article 12(6), insert—

“(7) Where the Administrator imposes a requirement under this article on a transport fuel supplier to produce evidence, the supplier must produce that evidence and ensure that it is—

- (a) accurate; and
- (b) produced in such form, and using such methodology, and within such period, as the Administrator requires.”

#### **Amendment of article 13 (power to require information)**

9. In article 13(3)—

- (a) omit “transport fuel”; and
- (b) for “paragraph (1)(a) to (d)” substitute “paragraph (1)”.

#### **Mass balance system**

10. After article 13, insert—

##### **“Mass balance system**

**13A.**—(1) A supplier must use a mass balance system in accordance with this article for the purposes of producing any information which the supplier is required to provide in pursuance of articles 12(4) and (7), and 13(5) and (7).

(2) In using a mass balance system, and notwithstanding articles 12(4)(a) and 7(a), and 13(5)(a) and (7)(b), a supplier may report that the relevant feedstock or fuel has sustainability characteristics other than its actual sustainability characteristics if the condition in paragraph (3) is met.

(3) That condition is that none of the relevant feedstock or fuel which is subject to that mass balance system is reported to have sustainability characteristics other than those attributed to it by that system.

(4) In this article, “report” means report under articles 12(4) and (7), and 13(5) and (7), and “reported” is to be construed accordingly.

(5) A mass balance system is a system which—

- (a) allows amounts of relevant feedstock or fuel with different sustainability characteristics to be mixed (“the mixture”);
  - (b) provides for the sustainability characteristics of amounts added to the mixture to be attributed to other amounts withdrawn from the mixture; and
  - (c) requires the sustainability characteristics attributed to the sum of the amounts withdrawn from the mixture to be the same, and in the same quantities, as the sustainability characteristics attributed to the sum of the amounts added to the mixture.
- (6) For the purposes of paragraphs (2) to (5), the sustainability characteristics of relevant feedstock or fuel include—
- (a) its type;
  - (b) its place of origin; and
  - (c) any other matter relevant to its compliance with the sustainability criteria.”.

**Omission of article 14 (duty to report to Parliament)**

11. Article 14 is omitted.

**Amendment of article 15 (other powers and duties conferred and imposed on the Administrator)**

12.—(1) For article 15(1)(g), substitute—

“(g) where an account holder who is a transport fuel supplier has supplied information as to volumes of fuel supplied by that supplier pursuant to article 12(1)(a)(i) to (iv) and (vi), to verify that information so far as reasonably practicable;”.

(2) Omit article 15(1)(h).

(3) In article 15(2)(b), omit “(other than the annual report referred to in article 14)”.

(4) For article 15(3)(a), substitute—

“(a) information as to the amount of relevant hydrocarbon oil which has been notified by a particular supplier to the Administrator; and”.

**Amendment of article 16 (application for RTF certificates)**

13.—(1) For article 16(2)(a), substitute—

“(a) a declaration from an individual nominated by the transport fuel supplier which confirms that—

(i) the information submitted in the application and referred to in paragraph (3)(b) and (d) is accurate;

(ii) the renewable transport fuel has not already been, and will not be, counted under the support scheme of another EEA state within the meaning of article 2(k) of the directive, or a UK renewable energy obligation other than the renewable transport fuel obligation of the supplier; and”.

(2) For article 16(3)(b), substitute—

“(b) the supplier has provided the Administrator with the information required by the Administrator pursuant to article 12(1)(a);”.

(3) For article 16(3)(c), substitute—

“(c) the supplier has provided the Administrator with a verifier’s assurance report in respect of information relating to the compliance of the renewable transport fuel with the sustainability criteria which has been submitted in the application or is contained in the information referred to in sub-paragraph (b);”.

(4) In article 16(3)(e)—

- (a) after “satisfied”, insert “so far as is reasonably practicable”; and
- (b) for “(b), (c) and (d)” substitute “(b) and (d)”.
- (5) After article 16(3)(e), insert—
  - “(ea) the Administrator is satisfied that the renewable transport fuel has not already been, and will not be, counted under the support scheme of another EEA state within the meaning of article 2(k) of the directive, or a UK renewable energy obligation other than the renewable transport fuel obligation of the supplier;”.
- (6) For article 16(3)(g), substitute—
  - “(g) the supplier makes the application for the RTF certificate by the 12th August immediately following the obligation period during which the renewable transport fuel was supplied, or such later date as the Administrator may notify to the supplier for the purposes of this sub-paragraph.”
- (7) After article 16(3), insert—
  - “(3A) For the purposes of this article, “the renewable transport fuel” is the renewable transport fuel in respect of which the RTF certificate has been applied for.”
- (8) In article 16(4), omit “to the best of the person’s knowledge and belief”.

#### **Verifier’s assurance procedures and reports**

- 14. After article 16, insert—

##### **“Verifier’s assurance procedures and reports**

- 16A.—(1) A verifier’s assurance report must—

- (a) confirm that the assurance procedures used in the preparation of the report—
  - (i) met the requirements in respect of limited assurance engagements prescribed in ISAE 3000, or an equivalent standard; and
  - (ii) were undertaken by a person with appropriate expertise who is not the supplier or a connected person of the supplier;
- (b) be prepared by a person with appropriate expertise who is not the supplier or a connected person of the supplier and in accordance with the requirements in respect of limited assurance engagements prescribed in ISAE 3000, or an equivalent standard;
- (c) consider whether the relevant systems used to collate and report information relating to the compliance of renewable transport fuel with the sustainability criteria are likely to produce relevant data which is reasonably accurate and reliable and whether there are controls in place to help protect against material misstatements due to fraud or error;
- (d) where the verifier intends to use as evidence work performed by the supplier or another party, consider the frequency and methodology of sampling used by that party and the robustness of the relevant data; and
- (e) state whether anything has come to the verifier’s attention to indicate that—
  - (i) the relevant data has not been prepared in accordance with any guidance produced by the Administrator under article 15(2)(b); and
  - (ii) the information provided by the supplier under article 12 or 13 in respect of the renewable transport fuel covered by the application is not accurate.

- (2) In paragraph (1)—

“relevant data” means—

- (a) the information referred to in paragraph (1)(c); and
- (b) any other information or data on which that information is based;

“relevant systems” means the systems by which the relevant data were produced;

“sampling” means sampling for the purposes of obtaining or checking the relevant data.

#### **Annual verifier’s report on additional sustainability information**

**16B.**—(1) A transport fuel supplier which has made an application for RTF certificates in respect of renewable transport fuel supplied during an obligation period must submit a report which meets the requirements of paragraph (1) of article 16A as modified in accordance with paragraph (2).

(2) For the purposes of paragraph (1), article 16A is to have effect as if, in paragraph (1)(c), for “information relating to the compliance of renewable transport fuel with the sustainability criteria” there were substituted “additional sustainability information”.

(3) The report referred to in paragraph (1) must be submitted to the Administrator by the 12th August immediately following that obligation period or such later date as the Administrator may notify to the supplier for the purposes of this paragraph.

(4) A report submitted under paragraph (1) need not confirm matters already confirmed by a verifier’s assurance report submitted to the Administrator.”

#### **Amendment of article 17 (issue of RTF certificates)**

**15.**—(1) For article 17(1), substitute—

“(1) Where each of the requirements in article 16(1) to (3) has been met, the Administrator must issue an RTF certificate to a transport fuel supplier for each whole litre of the renewable transport fuel, as defined in article 16(3A), which—

- (a) is for use as fuel in road vehicles,
- (b) meets the sustainability criteria,
- (c) is owned by the supplier at the time when the requirement to pay the duty of excise with which the fuel is chargeable takes effect, and
- (d) is supplied by the supplier at or for delivery to places in the United Kingdom during an obligation period.”

(2) After article 17(1), insert—

“(1A) For the purposes of paragraph (1) the volume of an amount of renewable transport fuel is deemed to be the notional volume of that fuel determined in accordance with article 5(4A).”

(3) For article 17(3), substitute—

“(3) For the purposes of section 127(2)(d) of the 2004 Act, “the other specified facts” are—

- (a) that the supplier has notified the Administrator of each of the matters listed in section 127(2)(a) to (c); and
- (b) the greenhouse gas emission saving attributable to the use of the fuel stated in the certificate, described by reference to one of the following categories—
  - (i) Less than 35%;
  - (ii) Equal to or more than 35%, but less than 50%;
  - (iii) Equal to or more than 50%, but less than 60%;
  - (iv) Equal to or more than 60%.”

#### **Amendment of article 18 (transfers of RTF certificates)**

**16.** In article 18(3), for “unless the contrary is shown” substitute “unless the transferor notifies the Administrator otherwise at the same time as notifying the Administrator of the details of the transfer in accordance with paragraph (2)(a)”.

### **Amendment of article 19 (use of an RTF certificate in a later obligation period)**

17. For article 19, substitute—

“19.—(1) The production of an RTF certificate by a supplier to the Administrator may count as evidence that the amount of renewable transport fuel stated in the certificate was supplied at or for delivery to places in the United Kingdom during the obligation period immediately following the obligation period stated in the certificate (“the later period”) in any of the following circumstances—

- (a) where the obligation period stated in the certificate is the obligation period beginning with 15th April 2010;
- (b) where the obligation period stated in the certificate is the obligation period beginning with 15th April 2011, and—
  - (i) the certificate was issued in respect of fuel supplied before the day on which the 2011 Order comes into force;
  - (ii) the fuel would have met the sustainability criteria which would have applied had that fuel been supplied on the first day of the later period; and
  - (iii) the supplier has provided the Administrator with a verifier’s assurance report sufficient to satisfy the Administrator that sub-paragraph (ii) is satisfied;
- (c) where the obligation period stated in the certificate is an obligation period beginning on or after 15th April 2011, and—
  - (i) the certificate was issued in respect of fuel supplied on or after the day on which the 2011 Order comes into force; and
  - (ii) the fuel in respect of which the certificate was issued would have met the greenhouse gas emission saving threshold established in accordance with paragraph 3 of the Schedule if that fuel had been supplied on the first day of the later period.

(2) But in all cases a renewable transport fuel certificate, or a set of renewable transport fuel certificates in which the same obligation period is stated, may not count in relation to more than 25% of a supplier’s renewable transport fuel obligation for the obligation period immediately following the obligation period stated in the certificates.”

### **Amendment of article 20 (revocation of an RTF certificate)**

18.—(1) In article 20(1)(b), for “the transport fuel supplier to whom it was issued or any connected person” substitute “the transport fuel supplier to whom it was issued, any connected person or any person who has produced a verifier’s assurance report”.

(2) For article 20(1)(c) and (d), substitute—

- “(c) the information provided to the Administrator in relation to the certificate pursuant to article 12(1)(a) was materially inaccurate,
- (d) the evidence provided in relation to the information referred to in sub-paragraph (c) was insufficient to substantiate it, or
- (e) the verifier’s assurance report was materially inaccurate.”

(3) In article 20(4)(c)(i), for “notice, or” substitute “notice, and”.

(4) In article 20(4)(c)(ii), for “the 28th August” substitute “the 16th October”.

(5) In article 20(5), for “the 29th August” substitute “the 23rd October”.

(6) In article 20(7)(a), for “the 12th September” substitute “the 6th November”.

(7) In article 20(8)(b), for “the 28th September” substitute “the 15th November”.

(8) In article 20(14), omit “to the best of the person’s knowledge or belief”.

### **Amendment of article 21 (payments)**

**19.**—(1) Article 21 is amended as follows—

(2) In article 21(7)—

(a) for Step 4, substitute—

“*Step 4*

Multiply the shortfall amount by the buy-out price (which is £0.30). The amount given by this step is the sum which the supplier is to pay to the Administrator under paragraph (6).”;

(b) omit Steps 5 and 6.

(3) In article 21(8), for “5th November in the same year” substitute “10th January in the following year”.

(4) In article 21(10) and (11), for “6th November” substitute “11th January”.

### **Amendment of article 22 (re-cycling of buy-out payments)**

**20.**—(1) For article 22(1) substitute—

“(1) For the purposes of section 128(9) of the 2004 Act, the “transport fuel suppliers of a specified description” are any transport fuel supplier who, in relation to an obligation period in respect of which the Administrator has received the sums referred to in section 128(7)—

(a) is an obligated supplier, or a non-obligated supplier for whom an account is maintained by the Administrator pursuant to article 7(3)(a); and

(b) held one or more RTF certificates in an RTF account at the time they were notified to the Administrator in accordance with article 21(3) or surrendered under paragraph (2)(a) as the case may be.”

(2) In article 22(2)(b), for “5th November” in each place where it occurs substitute “10th January”.

(3) In article 22(2)(d), for “5th December” in each place where it occurs substitute “10th February”.

(4) In article 22(2)(e), for “5th December” in each place where it occurs substitute “10th February”.

(5) In article 22(2)(g), for “at the end of the obligation period” substitute “at the time they were notified to the Administrator in accordance with article 21(3) or surrendered under sub-paragraph (a) as the case may be”.

(6) In article 22(3)(b), for “at the end of the principal obligation period” substitute “at the time they were notified to the Administrator in accordance with article 21(3) or surrendered under paragraph (2)(a) as the case may be in relation to the principal obligation period”.

(7) In article 22(6)(c), for “28th September” substitute “15th November”.

### **Amendment of article 23 (civil penalties)**

**21.**—(1) In article 23(1)—

(a) for “12(4) and (6)” substitute “12(4) and (7)”;

(b) after “16(4),” insert “16B(1) to (3).”.

(2) After article 23(2), insert—

“(2A) A supplier is liable to a civil penalty if that supplier or other person fails to submit a verifier’s report as required by article 16B(1) to (3).”

(3) For article 23(3), substitute—

“(3) A supplier or other person is liable to a civil penalty if at the time that supplier or other person provides the information or produces the evidence (as the case may be) referred to in article 7(6), 8(3), 12(4) or (7), 13(5) or (7), 16(4) or 20(14)—

- (a) that supplier or other person has not taken reasonable steps to ensure that the information or evidence is accurate, or
- (b) that supplier or other person has taken reasonable steps to ensure that the information or evidence is accurate, but the condition set out in paragraph (4) or (5) is subsequently satisfied.”

(4) In article 23(4)(a) and (5)(a), for “five” substitute “twenty”.

(5) In article 23(5)—

(a) for “12(4) or (6)” substitute “12(4) or (7)”;

(b) for “the 28th September” substitute “the 16th November”.

(6) In article 23(8), for “calculated in accordance with” substitute “defined in”.

(7) In article 23(13), in paragraph (a) of the definition of “applicable turnover” for “road” substitute “petrol, diesel and renewable”.

### **Transitional provisions**

22. After article 24 (objections to civil penalties), insert—

## **“PART 7**

### **Transitional provisions**

#### **Transitional provisions**

25. This Part applies to fuel supplied at or for delivery to places in the United Kingdom before the day on which the 2011 Order comes into force.

#### **Determination of the specified amount**

26.—(1) For the purposes of calculating the volume of the relevant hydrocarbon oil which a supplier has supplied at or for delivery to places in the United Kingdom during the period beginning with 15th April 2011 and ending with the day before the 2011 Order comes into force under article 4(5)(a), relevant hydrocarbon oil supplied by the supplier before the day the 2011 Order comes into force is not to be taken into account unless that fuel is—

- (a) fossil fuel; and
- (b) within paragraph (2).

(2) Relevant hydrocarbon oil is within this paragraph if it is of one of the following descriptions—

- (a) hydrocarbon oil which is chargeable to the duty of excise on hydrocarbon oil under section 6 of the 1979 Act, other than the renewable diesel component in hydrocarbon oil comprising a mixture of heavy oil which is not renewable diesel and heavy oil which is renewable diesel;
- (b) the heavy oil component in bioblend, where a duty of excise is chargeable in relation to that bioblend under the 1979 Act, other than any renewable diesel component which is included in the heavy oil component;
- (c) the hydrocarbon oil component in bioethanol blend, where a duty of excise is chargeable in relation to that bioethanol blend under the 1979 Act.

### **Discharging a renewable transport fuel obligation**

27.—(1) For the purposes of discharging a person's renewable transport fuel obligation for the obligation period beginning with 15th April 2011, article 5(2) to (7) does not apply to renewable transport fuel supplied by that person before the day the 2011 Order comes into force.

(2) An amount of renewable transport fuel supplied by a person at or for delivery to places in the United Kingdom on or after 15th April 2011 but before the day on which the 2011 Order comes into force counts towards discharging that person's renewable transport fuel obligation for the obligation period beginning with 15th April 2011 if—

- (a) it is for use as fuel in road vehicles (whether or not it may also be used in other vehicles);
- (b) it is of one of the following descriptions—
  - (i) biodiesel in relation to which a duty of excise is chargeable under the 1979 Act;
  - (ii) the biodiesel component in bioblend, where a duty of excise is chargeable in relation to that bioblend under the 1979 Act;
  - (iii) bioethanol in relation to which a duty of excise is chargeable under the 1979 Act;
  - (iv) the bioethanol component of bioethanol blend, where a duty of excise is chargeable in relation to that bioethanol blend under the 1979 Act;
  - (v) natural road fuel gas—
    - (aa) in relation to which a duty of excise is chargeable under the 1979 Act; and
    - (bb) which is produced wholly from biomass;
  - (vi) biobutanol in relation to which a duty of excise is chargeable under the 1979 Act;
  - (vii) renewable diesel in relation to which a duty of excise is chargeable under the 1979 Act;
  - (viii) the renewable diesel component in bioblend which contains renewable diesel, being bioblend in relation to which a duty of excise is chargeable under the 1979 Act; or
  - (ix) the renewable diesel component in hydrocarbon oil, being hydrocarbon oil—
    - (aa) comprising a mixture of heavy oil which is not renewable diesel and heavy oil which is renewable diesel, and
    - (bb) in relation to which a duty of excise is chargeable under the 1979 Act;
- (c) that person owns the fuel at the time when the requirement to pay the duty of excise with which the fuel is chargeable takes effect.

(3) Where the biodiesel component referred to in paragraph (2)(b)(ii), or the bioethanol component referred to in paragraph (2)(b)(iv), is counted towards discharging a person's renewable transport fuel obligation, the amount of that component must be measured by its volume.

### **Information from obligated suppliers**

28.—(1) In respect of any period ending before the day on which the 2011 Order comes into force the reference in article 12(1) to “must” is to be read as “may”.

(2) The Administrator must impose a requirement on an obligated supplier to provide the Administrator with information as to—

- (a) the amount of any relevant hydrocarbon oil which—
  - (i) is fossil fuel;

- (ii) is within article 26(2); and
- (iii) has been—
  - (aa) supplied by the supplier at or for delivery to places in the United Kingdom during each relevant period, or
  - (bb) received by the supplier from another transport fuel supplier at places in the United Kingdom during each relevant period;
- (b) the amount of any renewable transport fuel supplied by that supplier at or for delivery to places in the United Kingdom which—
  - (i) is for use as fuel in road vehicles (whether or not it may also be used in other vehicles);
  - (ii) is of one of the descriptions set out in article 27(2)(b); and
  - (iii) meets one of the conditions set out in paragraph (3) in respect of each relevant period.
- (3) The conditions are that the fuel is—
  - (a) owned by the supplier at the time when the requirement to pay the duty of excise with which the fuel is chargeable takes effect, and supplied by the supplier at or for delivery to places in the United Kingdom during the relevant period in question; or
  - (b) received by the supplier from another transport fuel supplier at places in the United Kingdom during the relevant period in question.
- (4) In paragraphs (2)(a)(iii), (b)(iii) and (3), a “relevant period” means a period beginning with the 15th day of each month before the month in which the 2011 Order comes into force and ending with the 14th day of the following month during an obligation period.
- (5) An obligated supplier must comply with any requirement imposed on it under paragraph (2).
- (6) Paragraphs (3) to (7) of article 12 apply to information required by the Administrator pursuant to paragraph (2) in the same way that they apply to information required by the Administrator pursuant to article 12(1).
- (7) The references to article 12, or to paragraphs or sub-paragraphs of article 12, in articles 15(1)(g), 20(1)(c) and 23(1), (3) and (5) also include a reference to paragraph (5) of this article.

### **Application for RTF certificates**

**29.** Where a transport fuel supplier applies for an RTF certificate in respect of renewable transport fuel supplied by that supplier before the day on which the 2011 Order comes into force—

- (a) the conditions in article 16(3)(b), (c), (d), (e) and (ea) do not apply;
- (b) before an RTF certificate may be issued in respect of that fuel—
  - (i) the supplier must have provided the Administrator with the information required by the Administrator pursuant to article 28(2);
  - (ii) the Administrator must be satisfied that the information provided by the supplier pursuant to article 28(5)—
    - (aa) is accurate, and
    - (bb) has been provided in such form, using such methodology and within such period as the Administrator notifies for the purposes of article 12(3), or failing such notification, as the Administrator notifies for the purposes of this paragraph;
- (c) the declaration made pursuant to article 16(2)(a)—
  - (i) need not confirm the matters specified in article 16(2)(a)(ii);
  - (ii) need not refer to the information referred to in article 16(3)(b), (c) or (d);

- (iii) must confirm that the information provided by the supplier pursuant to article 28(5) is accurate.

### **Issue of RTF certificates**

**30.**—(1) Where the requirements of article 16(1), (2)(a)(i) and (b) and (3)(a), (f) and (g) and article 29(b) and (c) have been met, the Administrator must issue an RTF certificate to a transport fuel supplier for each litre of renewable transport fuel which is—

- (a) for use as fuel in road vehicles (whether or not it may also be used in other vehicles),
- (b) of one of the descriptions set out in article 27(2)(b),
- (c) owned by the supplier at the time when the requirement to pay the duty of excise with which the fuel is chargeable takes effect, and
- (d) supplied by the supplier at or for delivery to places in the United Kingdom during the period beginning with 15th April 2011 and ending with the day before the 2011 Order comes into force.

(2) Paragraphs (2), (3)(a) and (4) to (6) of article 17 apply in respect of RTF certificates issued under paragraph (1) of this article as they apply in respect of RTF certificates issued under article 17(1).

(3) Article 17(1) does not require an RTF certificate to be issued to a transport fuel supplier in respect of fuel supplied by that supplier during the period beginning with 15th April 2011 and ending with the day before the 2011 Order comes into force.

(4) Article 17(3)(b) does not apply to an RTF certificate to be issued to a transport fuel supplier in respect of fuel supplied by that supplier during the period beginning with 15th April 2011 and ending with the day before the 2011 Order comes into force.”

### **Sustainability criteria**

**23.** After the signature block, insert—

## **“SCHEDULE SUSTAINABILITY CRITERIA**

Article 2

### **Interpretation**

**1.** In this Schedule—

“chain of installations” means, in respect of any consignment of renewable transport fuel, all of the processing installations the use of which leads to a material modification from any of the relevant feedstock to the finished fuel. It does not include installations solely used for the collection, transportation or storage of the feedstocks;

“emissions from land-use change” means the annualised emissions from land-use change attributable to the renewable transport fuel as calculated in accordance with paragraph 7 of part C of Annex V to the directive;

“fossil element” means, in respect of an amount of renewable transport fuel, the part of that fuel, or of the material used to produce that fuel, which is or derives from fossil fuel;

“GHG” means greenhouse gas;

“low emissions area” means an area listed in a report submitted in accordance with article 19(2) of the directive as an area in which the typical GHG emissions from cultivation of agricultural raw materials can be expected to be lower than or equal to the

emissions reported under the heading ‘Disaggregated default values for cultivation’ in part D of Annex V to the directive;

“nature protection area” means an area which is designated by law or the relevant competent authority for nature protection purposes;

“new chain of installations” means a chain of installations in respect of which production of renewable transport fuel in one or more of the installations begins on or after 1st January 2017;

“old chain of installations” means a chain of installations in respect of which production of renewable transport fuel in at least one of the installations was taking place on 23rd January 2008;

“primary forest” means forest and other wooded land of native species where, at any point in time in or after January 2008, there has been no clearly visible indication of human activity and the ecological processes have not been significantly disturbed;

“relevant biofuel production pathway” means the biofuel production pathway applicable to the renewable transport fuel in question or, where that renewable transport fuel is partially renewable transport fuel, the biofuel production pathway applicable to the part from relevant feedstocks of that renewable transport fuel;

“relevant forest” means land spanning more than one hectare with trees higher than five metres and a canopy cover of between 10% and 30% or trees able to reach those thresholds in situ;

“relevant land” means the land from which the relevant raw material was obtained;

“relevant nature protection purposes” means the nature protection purposes, if any, for which the relevant land was designated as a nature protection area;

“relevant raw material” means the raw material from which the renewable transport fuel was produced;

“renewable element” means, in respect of an amount of renewable transport fuel, the part of that fuel, or of the material used to produce that fuel, which is or derives from a sustainable feedstock;

“excluded land” means—

- (a) primary forest;
- (b) land that is covered with or saturated by water permanently or for a significant part of the year;
- (c) land spanning more than one hectare with trees higher than five metres and a canopy cover of more than 30% or trees able to reach those thresholds in situ;

and subject to these, expressions which are also used in the directive have the same meaning which they bear in that directive.

### **Compliance with the sustainability criteria**

2.—(1) Subject to sub-paragraph (2), an amount of renewable transport fuel meets the sustainability criteria if—

- (a) it meets the GHG emission saving threshold established in accordance with paragraph 3; and
- (b) all relevant feedstocks from which it was produced meet the land criteria referred to in paragraph 7.

(2) An amount of renewable transport fuel which is produced from wastes or residues other than residues from agriculture, aquaculture, fisheries or forestry meets the sustainability criteria if it meets the GHG emission saving threshold, whether or not it meets the land criteria.

### **Greenhouse gas emission saving threshold**

3.—(1) Subject to sub-paragraph (2), an amount of renewable transport fuel meets the GHG emission saving threshold if the GHG emission saving from its use is equal to or greater than the minimum GHG emission saving applicable to that fuel as specified in paragraph 4.

(2) If the renewable transport fuel is produced partly from raw materials other than sustainable feedstocks, the minimum GHG emission saving for the purposes of this Schedule applies only to the volume of that fuel which is—

- (a) attributable to sustainable feedstocks; or
- (b) produced from wastes or residues other than residues from agriculture, aquaculture, fisheries or forestry.

(3) The GHG emission saving from the use of an amount of renewable transport fuel is the greater of—

- (a) where applicable, the default value determined in accordance with paragraph 5; and
- (b) the actual value determined in accordance with paragraph 6.

### **Minimum emission saving**

4.—(1) For the purposes of this Schedule, the “minimum GHG emission saving” is—

- (a) in respect of renewable transport fuel supplied before 1st April 2013—
  - (i) where the fuel is produced in an old chain of installations, nil;
  - (ii) in any other case, 35%;
- (c) in respect of renewable transport fuel supplied on or after 1st April 2013 but before 1st January 2017, 35%;
- (d) in respect of renewable transport fuel supplied on or after 1st January 2017 but before 1st January 2018, 50%;
- (e) in respect of renewable transport fuel supplied on or after 1st January 2018—
  - (i) where the fuel is produced in a new chain of installations, 60%;
  - (ii) in any other case, 50%.

(2) In this paragraph “supplied” means “supplied at or for delivery to places in the United Kingdom”.

### **Default value**

5.—(1) The default value referred to in paragraph 3(3)(a) is determined as follows.

(2) Where in parts A(a) and B(b) of Annex V to the directive, a value is specified for a default GHG emission saving for the relevant biofuel production pathway, the default value is equal to that specified value provided that—

- (a) the emissions from land-use change are equal to or less than zero; and
- (b) if the relevant biofuel production pathway is listed in part A of Annex V to the directive, the condition specified in sub-paragraph (3) is satisfied.

(3) The condition referred to in sub-paragraph (2)(b) and paragraph 6(4) is that the raw materials from which the renewable transport fuel was produced were—

- (a) cultivated outside the European Union;

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(a) Part A is entitled “Typical and default values for biofuels if produced with no net carbon emissions from land-use change”.  
(b) Part B is entitled “Estimated typical and default values for future biofuels that were not on the market or were on the market only in negligible quantities in January 2008, if produced with no net carbon emissions from land-use change”.

- (b) cultivated in a low emissions area; or
  - (c) wastes or residues other than residues from agriculture, aquaculture, fisheries or forestry.
- (4) Otherwise an actual value determined in accordance with paragraph 6 must be used.

**Actual value**

- 6.—(1) The actual value referred to in paragraph 3(3)(b) is determined as follows.
- (2) The actual value is the percentage GHG emission saving from the use of the renewable transport fuel which percentage is obtained by multiplying the result of the calculation set out at paragraph 4 of part C(a) of Annex V to the directive by 100.
- (3) Where in parts D(b) and E(c) of Annex V to the directive a default GHG emissions value is specified in respect of a variable in the formula set out in paragraph 1 of part C of Annex V to the directive, that GHG emissions value may be used in determining the GHG emission saving from the use of the renewable transport fuel for the purposes of sub-paragraph (2).
- (4) But a default value for emissions from cultivation specified in part D of Annex V to the directive may only be used where the condition specified in paragraph 5(3) is satisfied.

**Land criteria**

7. A relevant feedstock meets the land criteria if—
- (a) it was not obtained from land falling within any of the categories specified in paragraph 8(1); or
  - (b) the exception set out in paragraph 9 applies.
- 8.—(1) The categories referred to in paragraph 7(a) are—
- (a) primary forest,
  - (b) nature protection areas,
  - (c) land which was formerly wetland or forest,
  - (d) land which was peatland at any time in January 2008.
- (2) For the purposes of sub-paragraph (1)(c), land shall formerly have been wetland or forest if it—
- (a) fell within a category specified in sub-paragraph (3) at any time in January 2008; and
  - (b) did not fall within that category when the raw material was obtained from it.
- (3) The categories referred to in sub-paragraph (2)(a) are—
- (a) land that is covered with or saturated by water permanently or for a significant part of the year;
  - (b) land spanning more than one hectare with trees higher than five metres and a canopy cover of more than 10% or trees able to reach those thresholds in situ.
- 9.—(1) The exception referred to in paragraph 7(b) applies if—
- (a) the relevant land is not excluded land;

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(a) Part C is entitled “Methodology”.

(b) Part D is entitled “Disaggregated default values for biofuels and bioliquids”. The values specified in part D are required for the purposes of the determination made under part C of Annex V to the directive.

(c) Part E is entitled “Estimated disaggregated default values for future biofuels and bioliquids that were not on the market or were only on the market in negligible quantities in January 2008”. The values specified in part E are required for the purposes of the determination made under part C of Annex V to the directive.

- (b) the relevant land falls within one or more of the categories specified in sub-paragraph (2);
  - (c) the evidence specified in sub-paragraph (3) is provided to the Administrator in respect of each of those categories within which the relevant land falls; and
  - (d) any requirement imposed under sub-paragraph (4) in respect of the provision of that evidence is complied with.
- (2) The categories referred to in sub-paragraph (1)(b) are—
- (a) nature protection areas;
  - (b) relevant forest;
  - (c) land that was peatland at any time in January 2008.
- (3) The evidence referred to in sub-paragraph (1)(c) is—
- (a) in respect of land within a nature protection area, evidence that the production of the relevant raw material did not interfere with the relevant nature protection purposes;
  - (b) in respect of relevant forest, evidence that the GHG emission saving from the use of the renewable transport fuel, as calculated in accordance with part C of Annex V to the directive, is equal to or greater than the minimum GHG emission saving applicable to the fuel at the time when it is used, as set out in paragraph 4; and
  - (c) in respect of land which was peatland at any time in January 2008, evidence that the cultivation and harvesting of the relevant raw material did not involve the drainage of previously undrained soil.
- (4) The Administrator may impose requirements as to—
- (a) the form in which the evidence referred to in sub-paragraph (1)(c) must be provided;
  - (b) the methodology to be used in compiling and providing that evidence; and
  - (c) the period within which that evidence must be provided.”

**Amendment of the Legislative and Regulatory Reform (Regulatory Functions) Order 2007**

24. In Part 1 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007(a), omit “Office of the Renewable Fuels Agency”.

Signed by authority of the Secretary of State for Transport

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Transport

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072) (“the RTFO Order”) and, in one minor respect, amends the Legislative and Regulatory Reform

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(a) S.I. 2007/3544, to which a relevant amendment was made by S.I. 2009/2981.

(Regulatory Functions) Order 2007 (S.I. 2007/3544). It also makes transitional provision in respect of the amendments to the RTFO Order.

The Order transposes, in so far as they relate to transport, articles 3, 17 to 19 and 21(2), and Annexes I and V, of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ No L 140, 5.6.2009, pp. 16-62) (“the Directive”).

*Article 3* inserts new definitions into article 2 including various definitions which underpin the imposition of the mandatory sustainability criteria for biofuels imposed by the Directive. This article also amends the definition of “connected person” to cross-refer to a new definition contained in the Corporation Tax Act 2010 (c.4).

*Article 4* inserts and amends various definitions of fuels in article 3. In particular “hydrocarbon oil” is redefined to cover gaseous fuels and to remove the cross-reference to the Hydrocarbon Oil Duties Act 1979. “Relevant hydrocarbon oil” is redefined so as to cover renewable transport fuel as well as fossil fuel for use in road vehicles. The definition of “renewable transport fuel” as partially defined at section 132(1) of the Energy Act 2004 (c.20) is also expanded in order to cover partially renewable fuels.

*Article 5* amends the way in which the amount of renewable transport fuel which obligated suppliers are required to supply is calculated under article 4. That amount is now to be calculated as a percentage of the combined volume of fossil fuel and non-sustainable renewable transport fuel supplied. To reflect the fact that the mandatory sustainability criteria will apply as of a date in the middle of a reporting year under the RTFO Order, this article inserts a new article 4(5) which relates only to the obligation year 2011-2012.

*Article 6* inserts new article 4A into the RTFO Order which places an ongoing duty on the Secretary of State to keep under review what further steps may be necessary to meet the requirements of the Directive in respect of transport.

*Article 7* amends article 5 in order that renewable transport fuel only counts towards discharging a supplier’s renewable transport fuel obligation if it is shown to meet the applicable sustainability criteria. Fuel attributable to sustainable wastes which meets the sustainability criteria is double counted for the purposes of discharging a supplier’s obligation.

*Article 8* amends article 12 to place identical obligations on the Administrator to require suppliers to provide fuel volume and sustainability information, and in turn on suppliers to provide that information. A default reporting period of a month, save in respect of December to January which is further sub-divided, applies in relation to the reporting of volumes of fuel supplied but does not apply to reporting of sustainability information.

*Article 9* amends article 13 for consistency both with the definition of obligated supplier and the amendments made by article 8 of this Order to article 12.

*Article 10* inserts new article 13A into the RTFO Order which both defines, and requires suppliers to use, a ‘mass balance system’ for reporting information on the sustainability of renewable transport fuel to the Administrator.

*Article 11* revokes article 14 such that the Administrator is no longer under a duty to report to Parliament.

*Article 12* amends article 15 for consistency with amendments made elsewhere in this Order.

*Article 13* amends article 16 relating to the mandatory requirements that must be met before the Administrator can issue renewable transport fuel certificates (“RTF certificates”). The Administrator must now be satisfied that the renewable transport fuel in respect of which the certificates have been applied for has not and will not be counted under the support scheme of another EEA state nor under any other UK renewable energy obligation. The supplier must also now provide the Administrator with a verifier’s assurance report in relation to that fuel. The

previous distinction between the obligations imposed on obligated and non-obligated suppliers when applying for certificates is removed.

*Article 14* inserts new articles 16A and 16B into the RTFO Order. New article 16A sets out the standards and specific requirements that a verifier's assurance procedures and subsequent report must satisfy. This article also sets out who it is who may prepare such a report and undertake the assurance procedures. New article 16B requires all suppliers who apply for RTF certificates in relation to any given obligation period to submit at least one verifier's report in respect of that period confirming the 'additional sustainability information' required under Article 1 of Commission Decision 2011/13/EU (OJ No L 9, 13.1.2011, p11).

*Article 15* amends article 17 to ensure that RTF certificates are only awarded to fuel meeting the applicable sustainability criteria. This article also provides that one certificate is now to be issued for each litre of the notional volume of renewable transport fuel supplied, the effect of which is to allow an appropriate number of certificates to be awarded in respect of partially renewable fuels.

*Article 16* amends article 18(3) to clarify a previously unclear provision.

*Article 17* substitutes a new article 19 dealing with 'carry over' of RTF certificates into a later obligation period. The effect is that certificates issued in the 2010-2011 obligation period may be carried over into 2011-2012 without any sustainability criteria being applied. Certificates issued in respect of fuel supplied between the commencement of the 2011-2012 obligation period and the coming into force of this Order may be carried over into 2012-2013 only if a verifier's assurance report is submitted sufficient to satisfy the Administrator that the relevant fuel met the sustainability criteria. Certificates issued in respect of fuel supplied after the coming into force of this Order may, in most cases, be carried over without any further application of conditions as to sustainability since the certificates will only have been issued in the first place where a verifier's assurance report confirming compliance with the sustainability criteria was submitted. However, if the greenhouse gas emission saving threshold applicable to the fuel covered by a certificate changes at the end of an obligation period, that certificate can only be carried over into the next obligation period if the new threshold was met by that fuel.

*Article 18* amends article 20 for consistency with amendments made elsewhere in this Order relating to verifier's assurance reports and the additional sustainability information. This article also amends the dates by which the steps in the revocation process must be taken.

*Article 19* amends article 21 to remove obsolete references to the duty derogation and to change the dates by which buy-out payments must be made and by reference to which interest accrues on overdue buy-out payments.

*Article 20* amends article 22 to clarify that the buy-out fund is to be distributed amongst those who held the relevant RTF certificates at the time they were redeemed or surrendered. This article also amends the dates by which the steps in the buy-out recycling process must be taken.

*Article 21* amends article 23 to make suppliers liable for a civil penalty for failure to submit a verifier's assurance report in respect of the additional sustainability criteria. This article also extends the period of time within which suppliers must inform the Administrator after becoming aware that information or evidence they have provided may be inaccurate. It also makes amendments for consistency with amendments made elsewhere in this Order.

*Article 22* inserts new articles 25 to 30 which set out transitional provisions allowing for the continued operation of the RTFO Order as it stood immediately prior to the amendments made by this Order in relation to fuel supplied before this amending Order comes into force.

*Article 23* inserts a new schedule setting out the sustainability criteria which renewable transport fuel must meet if it is to count towards discharging the obligation. Such fuel will satisfy the criteria if it both meets the applicable greenhouse gas emission saving threshold and the feedstocks from which it was produced meet the land criteria. Fuel produced from wastes or residues (other than residues from agriculture, aquaculture, fisheries or forestry) benefits from a partial exemption in that it does not have to meet the land criteria.

*Article 24* amends Part 1 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 to remove the reference to the Office of the Renewable Fuels Agency which was dissolved by the Office of the Renewable Fuels Agency (Dissolution and Transfer of Functions) Order 2011 (S.I. 2011/493).

A Transposition Note in respect of the relevant parts of Directive 2009/28/EC has been laid before each House of Parliament.

A series of impact assessments on the effect that this instrument will have on the costs of business and the voluntary sector is available from the Low Carbon Fuels Division, Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR (telephone 020 7944 4895). Those impact assessments and an Explanatory Memorandum are available alongside the instrument on the UK legislation website, [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies of the impact assessments have been placed in the library of each House of Parliament.

A copy of the Directive and the Decision referred to in this Explanatory Note may be obtained from the Office of Public Sector Information or viewed in the Official Journal of the European Union via the EUR-Lex website at <http://eur-lex.europa.eu/>.

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