

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.

DRAFT STATUTORY INSTRUMENTS

2013 No.

**TRANSPORT
ENERGY**

SUSTAINABLE AND RENEWABLE FUELS

**The Renewable Transport Fuel
Obligations (Amendment) Order 2013**

Made - - - -

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), 126(1) to (5), 127, 129, 132(1) and 192(4) of the Energy Act 2004⁽¹⁾ (“the 2004 Act”), and by section 2(2) of the European Communities Act 1972⁽²⁾ (“the 1972 Act”).

The Secretary of State is a Minister designated⁽³⁾ for the purposes of section 2(2) of the 1972 Act in relation to energy and energy sources.

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

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 of Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Renewable Transport Fuel Obligations (Amendment) Order 2013 and, subject to paragraph (2), comes into force on the day after the day on which the Order is made.

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- (1) [2004 \(c.20\)](#); sections 125A(1) and 125B(1) were inserted by paragraphs 1 and 2 of Schedule 7 to the Climate Change Act 2008 (c.27).
(2) [1972 \(c.68\)](#); section 2(2) 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).
(3) [S.I. 2010/761](#).

(2) Articles 3 to 11 come into force on 15th April 2013.

Amendment of the Renewable Transport Fuel Obligations Order 2007

2. The Renewable Transport Fuel Obligations Order 2007(4) is amended as follows.

Amendment of article 2 (interpretation)

3. After article 2(2) insert—

“(3) For the purposes of this Order, an inland waterway vessel or a recreational craft which does not normally operate at sea is to be treated as such only if it does not normally operate beyond the limits of waters in—

- (a) category A;
- (b) category B; and
- (c) category C, excluding tidal rivers and estuaries,

where categories A, B and C have the meanings given to them in Merchant Shipping Notice 1827(M) issued by the Maritime and Coastguard Agency as revised or re-issued from time to time.”.

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

4. After article 3(3) insert—

“(3A) “Gas oil” has the same meaning as in regulation 2 of the Motor Fuel Regulations(5).”.

5. After article 3(5A) insert—

“(5B) “Low sulphur gas oil” means any gas oil—

- (a) which is for use in—
 - (i) non-road mobile machinery, including inland waterway vessels which do not normally operate at sea;
 - (ii) agricultural tractors;
 - (iii) forestry tractors; or
 - (iv) recreational craft which do not normally operate at sea(6); and
- (b) the sulphur content of which does not exceed the level specified in regulation 5B(1)(b) of the Motor Fuel Regulations(7).”.

6. For article 3(10) substitute—

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

- (a) is chargeable to a duty of excise under the 1979 Act(8);
- (b) is for use as fuel in road vehicles, non-road mobile machinery (including inland waterway vessels which do not normally operate at sea), agricultural or forestry tractors, or recreational craft which do not normally operate at sea; and

(4) S.I. 2007/3072, amended by section 13(10) of the Finance Act 2008 (c.9), S.I. 2009/843, S.I. 2011/493 and S.I. 2011/2937.

(5) The definition of “gas oil” was inserted into S.I. 1999/3107 by regulations 2 and 3(b) of S.I. 2003/3078.

(6) The definitions of agricultural or forestry tractor, inland waterway vessel, non-road mobile machinery and recreational craft were inserted into section 132(4) of the Energy Act 2004 (c.20) by S.I. 2012/2723.

(7) Regulations 5A, 5B and 5C of S.I. 1999/3107 were substituted for regulation 5A as previously enacted by regulations 2 and 7 of S.I. 2010/3035.

(8) 1979 (c.5).

(c) falls within one of the following categories—

- (i) petrol,
- (ii) diesel,
- (iii) gas oil,
- (iv) renewable transport fuel,

but does 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.”.

Amendment of article 4 (the renewable transport fuel obligation)

7. In article 4(6)(c)(ii) for “5.2632%” substitute “4.9870%”.

8. For article 4(8)(a)(ii) substitute—

“(ii) is for use as fuel in road vehicles, non-road mobile machinery (including inland waterway vessels which do not normally operate at sea), agricultural or forestry tractors, or recreational craft which do not normally operate at sea;”.

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

9. For paragraph (1) of article 5 substitute the following—

“(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—

- (a) that that amount of fuel is supplied by that person at or for delivery to places in the United Kingdom at that time; and
- (b) in relation to fuel for which the requirement to pay the duty of excise with which the fuel is chargeable takes effect on or after 15th April 2013, that such of that fuel as is petrol, diesel, low sulphur gas oil or renewable transport fuel is relevant hydrocarbon oil at that time.

(1A) The presumption in paragraph (1)(a) is to be displaced only if the Administrator is satisfied that the fuel will not be supplied at or for delivery to places in the United Kingdom.

(1B) The presumption in paragraph (1)(b) is to be displaced only if the Administrator is satisfied that the fuel is not relevant hydrocarbon oil.”.

10. For paragraph (2) of article 5 substitute the following—

“(2) In relation to fuel which becomes chargeable to a duty of excise before 15th April 2013, an amount of renewable transport fuel only counts towards the discharging of a person’s renewable transport fuel obligation for an obligation period if—

- (a) it is for use as fuel in road vehicles,
- (b) it meets the sustainability criteria, and
- (c) the condition set out in paragraph (4) is satisfied.

(2A) In relation to fuel which becomes chargeable to a duty of excise on or after 15th April 2013, an amount of renewable transport fuel only counts towards the discharging of a person’s renewable transport fuel obligation for an obligation period if—

- (a) it is for use as fuel in road vehicles, non-road mobile machinery (including inland waterway vessels which do not normally operate at sea), agricultural or forestry tractors, or recreational craft which do not normally operate at sea,

- (b) it meets the sustainability criteria, and
- (c) the condition set out in paragraph (4) is satisfied.”.

Amendment of article 17 (issue of RTF certificates)

11. For article 17(1)(a) substitute—

- “(a) is for use as fuel in road vehicles, non-road mobile machinery (including inland waterway vessels which do not normally operate at sea), agricultural or forestry tractors, or recreational craft which do not normally operate at sea.”.

Amendment of article 23 (civil penalties)

12. After article 23(12) insert—

“(12A) Where a defaulter⁽⁹⁾ does not pay all or any part of the penalty to the Administrator by the date before which the civil penalty must be paid—

- (a) the sum outstanding is to increase at the rate specified in paragraph (12B) and the increase is to be calculated in accordance with paragraph (12C); and
- (b) the increased sum is a debt due from the defaulter to the Administrator until it has been paid in full.

(12B) The rate for the purposes of paragraph (12A) is 5 percentage points above the base rate of the Bank of England as at the date before which the civil penalty must be paid to the Administrator.

(12C) The increase is to be calculated on a daily basis beginning on the date before which the civil penalty must be paid to the Administrator, and ending on the date on which payment is received by the Administrator.”.

Signed by authority of the Secretary of State for Transport

Date

Parliamentary Under Secretary of State
Department for Transport

(9) The effect of section 129(1) and (2) of the Energy Act 2004 (c.20) is to provide that a “defaulter” is a person who is liable to a civil penalty under an RTF Order (which is an Order made under section 124(1) of the Energy Act 2004).

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 2007 Order”). It transposes, in part, Articles 7a to 7e and Annex IV 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 and amending Council Directive 93/12/EEC (OJ No L 350, 28.12.1998, p.58), as inserted by Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 (OJ No L 140, 5.6.2009, pp. 88-113).

The overall purpose of the amendments to the 2007 Order is to expand the Renewable Transport Fuels Obligation (“the RTF obligation”), which is imposed on suppliers by article 4 of the 2007 Order, to cover suppliers of fuel for additional end uses. These are non-road mobile machinery (including inland waterway vessels which do not normally operate at sea), agricultural or forestry tractors, and recreational craft which do not normally operate at sea.

Article 3 of this Order sets out the meaning of not operating at sea.

Article 4 to 6 of this Order amend article 3 of the 2007 Order (definitions of fuels and fuel products). They insert definitions of “gas oil” and “low sulphur gas oil”, and amend the definition of “relevant hydrocarbon oil” to include “gas oil” and fuel used for the additional end uses.

The effect of *article 7* of this Order is to ensure that the total volume of fuel supplied in the United Kingdom which must come from a renewable source is not increased by fuel for the additional end uses being brought within the scope of the 2007 Order. More specifically the 2007 Order places an obligation on fuel suppliers to ensure that a certain percentage of the fuel they supply is made up of renewable transport fuel. This percentage is referred to as “the specified amount” and is provided for in article 4(6)(c)(ii) of the 2007 Order. Bringing fuel for the additional end uses within the scope of the 2007 Order would increase the total volume of renewable fuel needing to be supplied across the United Kingdom under the 2007 Order, should the specified amount remain unchanged. Therefore to keep the total volume of renewable fuel supplied across the United Kingdom constant, article 7 reduces the specified amount.

Article 8 of this Order brings fuel for the additional end uses within the meaning of “eligible oil”.

Article 9 of this Order extends paragraph (1) of article 5 of the 2007 Order (determinations of amounts of transport fuel). It introduces a new presumption that certain types of fuel which pass the duty point on or after 15th April 2013 will be taken to constitute relevant hydrocarbon oil. It also inserts a new paragraph (1B), which allows for displacement of the new presumption that is added to article 5(1) by this Order.

The effect of *Article 10* of this Order, which amends article 5(2) of the 2007 Order, is that fuel for the additional end uses counts towards discharging a supplier’s RTF obligation (subject to certain conditions being met). Provision is made so that this change does not apply for calculations that occur on or after 15th April 2013 in relation to fuel that passed the duty point before that date.

Article 11 of this Order amends article 17 of the 2007 Order (issue of RTF certificates) so that fuel for the additional end uses counts as fuel for which renewable transport fuel certificates must be issued (subject to certain requirements being satisfied).

Article 12 of this Order makes express provision for an unpaid civil penalty imposed under the 2007 Order, along with interest on the penalty, to be enforceable as a civil debt.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Renewable Transport Fuel Obligations (Amendment) Order 2013 No. 816*

An impact assessment on the effect that expanding the scope of the 2007 Order to cover additional fuel and suppliers 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). The impact assessment and a transposition note are annexed to the Explanatory Memorandum which is available alongside this instrument on the UK legislation website at <http://www.legislation.gov.uk>. A copy of the impact assessment has been placed in the library of each House of Parliament.

A copy of the Directives referred to in this Explanatory Note may be viewed in the Official Journal of the European Union via the EUR-lex website at <http://eur-lex.europa.eu>.

Merchant Shipping Notices are published by the Maritime and Coastguard Agency and can be viewed on the agency's website at <http://www.dft.gov.uk/mca> which also has details of any amendments or replacements.