

# **ENERGY ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2: Sustainability and Renewable Energy Sources**

#### **Chapter 5: Renewable Transport Fuel Obligations**

#### **Section 124: Imposition of renewable transport fuel obligations**

282. This section enables the Secretary of State to make an order imposing a “renewable transport fuel obligation” (“RTFO”) on specified parts of the UK transport fuel supply sector. Sections 125 to 132 elaborate on this order-making power. The powers in these sections apply to the whole of the United Kingdom.
283. Subsection (2) defines the obligation. An RTFO would require designated transport fuel suppliers to produce to the appointed Administrator evidence of a specified kind and in a specified form, showing that, within the relevant period, a specified amount of “renewable transport fuel” was supplied within the UK. The section would allow the requisite amount of fuel to be supplied either by the obligated supplier directly, or (wholly or partly) by other suppliers. The obligation periods, and the amount of “renewable transport fuel” (“RTF”) to be supplied in each period, would be specified. For these purposes “specified” means specified in, or determined in accordance with, the order (see section 132(1)).
284. Subsection (4) requires the Secretary of State to consult with relevant stakeholders before making any order under this section.
285. Subsection (5) states that the power to make an order introducing an RTFO is subject to the affirmative resolution procedure.

#### **Section 125: The Administrator**

286. This section enables the Secretary of State to appoint a body to administer an RTFO, and to determine the functions and funding of that body.
287. Subsection (2) allows an order to confer or impose powers, duties and discretions upon the Administrator in connection with an RTFO and to impose duties on suppliers in relation to the Administrator.
288. Under subsection (3), these may include powers for the Administrator to require suppliers to provide certain information it needs to carry out its functions, and to impose charges on suppliers. The level of charges (or 'specified amounts') would be specified in the order.
289. Subsection (4) states that sums received through any charges imposed must be used solely towards meeting costs incurred by the Administrator in carrying out his functions. This would allow the Administrator potentially to be funded entirely through the operation of the RTFO itself.

290. Where an order imposes duties on suppliers, subsection (5) allows such duties to be framed by reference to determinations made by the Administrator. For example, such a duty may be framed in such a way so that it only arises on the making of a particular determination by the Administrator.
291. Subsection (6) enables the Secretary of State to appoint either an existing statutory body or person as the Administrator, or to establish a new body specifically for the purpose in accordance with subsection (8). Where an existing statutory body is appointed, subsection (7) allows the order to amend any relevant legislation as appropriate to enable that body to carry out the functions of the Administrator.
292. Subsection (8) allows an order to establish a body corporate to be appointed as the Administrator, and to provide for matters related to the functioning of the body, including membership, staffing, expenditure and procedures. Subsection (9) allows an order to confer related discretions on the Secretary of State, the body itself, or members or staff of the body.
293. Subsection (10) enables the Secretary of State to make grants to the Administrator, which might be used, for example, to meet costs in establishing the body or to contribute towards the ongoing operational costs of the Administrator.

### ***Section 126: Determinations of amounts of transport fuel***

294. This section allows a renewable transport fuel order to make provision about how amounts of transport fuel are to be counted or determined for the purposes of provision made by or under this Chapter, for example, in relation to the discharging of an RTFO. For these purposes, regard may be had to the life-cycle effects of different fuels based on carbon emissions, sustainable development, agriculture and other economic activities, and the environment generally. The purpose is to allow a wide degree of flexibility in the operation of an RTFO, in particular, as regards what fuels 'count' towards the discharge of an RTFO, and to what extent.
295. For example, an order may:
- Stipulate that only RTFs of a specified description will count towards discharge of an RTFO.
  - Set maximum amounts for RTFs of specified descriptions that will count towards discharge of an RTFO.
  - Set minimum amounts for RTFs of specified descriptions that will count towards discharge of an RTFO.
  - Make provision that only a certain proportion of a particular type of RTF is to count for the purposes of an RTFO. For example, in the case of blended biofuel, it may be provided that only the proportion of the blended biofuel that is attributable to biofuel will count towards discharge of an RTFO. Blended biofuel is a fuel that consists of a blend of biofuel and fossil fuel (see section 132(1)).
  - Make provision for how such proportions are to be determined. For example, in the case of blended biofuel, there needs to be a way of determining the extent to which the blend is attributable to biofuel, as opposed to fossil fuel. This could be done by reference to the volumes of each of those fuels used to produce the blend.
  - Make provision for a supply of RTFs to be counted towards discharge of an RTFO only where it meets specified conditions relating to the fuel's supply (e.g. might relate to the purposes of the supply), the person by or to whom it was supplied (e.g. might limit to supply by the obligated supplier itself), or the place it was supplied to (e.g. might limit to certain geographical boundaries).
  - Make provision preventing evidence of the supply of the same RTF to be counted towards discharge of an RTFO for more than one supplier (i.e. 'double-counting').

- Make provision for the supply of any fuel that is subsequently exported outside the UK not to count towards discharge of an RTFO.
- Make provision for how units of various transport fuels are to be measured for the purposes of an obligation (for example, by energy, volume, etc).
- Make provision for specified RTFs to be allocated more or less “credit” per unit of fuel supplied than other RTFs.
- Make provision for aggregating different units of measurement applying to different transport fuels.
- Make provision allowing certain presumptions to be made. For example, it may be appropriate for certain presumptions to be made for the purpose of determining the effect of evidence provided to the Administrator by a supplier in support of the discharge of his RTFO.

### ***Section 127: Renewable transport fuel certificates***

296. This section enables the Secretary of State to make provision in an order for the Administrator to issue renewable transport fuel certificates (“RTF certificates”) to suppliers. An RTF certificates scheme would enable the trading of certificates between suppliers, and ‘banking’ of certificates for use in future obligation periods. The section allows an order to make provision for both these options.
297. Subsection (2) provides that an RTF certificate would certify that the stated amount of RTF has been supplied by the stated supplier, to the stated place and in the stated period. It would count as sufficient evidence of the facts certified for the purposes of an RTFO.
298. Subsection (3) provides that an order may specify conditions or requirements relating to the issue of certificates, including, as to the making of applications for certificates (including information to be provided).
299. Subsection (4) provides that an order may allow for transfers of certificates between specified persons, which would facilitate the trading of such certificates. Subsection (5) provides that an order may provide certain conditions in relation to such transfers, such as informing the Administrator.
300. Subsection (7) provides that an order may allow for certificates to be accepted after the deadline for producing evidence of discharge of an obligation. For example, an order might provide for a ‘reconciliation’ period during which suppliers are given a period of time to acquire additional certificates where necessary for the purpose of discharging their RTFOs.
301. Subsection (8) provides that an order may allow for certificates to be accepted in later periods than the period for which they were issued. This would allow companies, for example, to ‘bank’ certificates for future use or sale where they had more in one period than was required to fulfil their RTFO.

### ***Section 128: Discharge of obligation by payment***

302. This section enables the Secretary of State to make provision in an order requiring obligated suppliers who do not discharge their RTFOs through the production of evidence, to pay a specified amount (commonly described as a “buy-out price” - ‘BOP’) to the Administrator. This might relate to the amount of RTF by which a supplier has fallen short of its obligation in the relevant period (e.g by requiring payment of a specified sum per unit of RTF for the shortfall). A purpose of the power is to allow for a degree of flexibility for suppliers in meeting their obligations, and a safety net to limit the costs to the consumer should the price of renewables be higher than expected.

303. The section also allows for a two-stage enforcement approach to be adopted, whereby a supplier is given a period of time to pay the BOP, then a further period to pay at a penalty rate, before civil penalties may be invoked (see subsection (2)(a) and (d)).
304. Subsection (2) enables amounts to be increased in line with inflation (paragraph (b)). An order may provide for the BOP (and any penalty sums) to be repaid to a company in certain circumstances (e.g. where RTFO certificates produced by the company after the obligation period are accepted by the Administrator by virtue of section 127(7) (paragraph (c)). An order may prohibit the Administrator from seeking to recover BOP sums owing where specified conditions are satisfied (e.g. where a decision is taken to pursue civil penalties instead) (paragraph (d)).
305. Subsection (4) would allow an order to require specified suppliers to make payments into the “buy-out” fund, to cover any shortfall in payments due caused, for example, by an obligated supplier becoming insolvent without paying amounts owing for the relevant period. Under subsection (5), an order may provide for subsequent adjustment or repayment of such sums. For example, it may be appropriate for repayments to be made where the administrator or liquidator of a supplier who has become insolvent is subsequently able to raise funds to make a payment into the “buy-out” fund.
306. Subsections (6) and (7) provide that an order may require the Administrator to use a specified portion of BOP revenues to cover its operational costs; otherwise, the money must be recycled to specified transport fuel suppliers (e.g. only those who met their obligation in the relevant period) in accordance with a specified allocation system.

### ***Section 129: Imposition of civil penalties***

307. This section allows an order to provide for persons who contravene designated provisions made by or under Chapter 5 of Part 2 of the Act to be liable to a civil penalty of such amount considered appropriate by the Administrator. This might cover, for example, failure to discharge an obligation, or infringement of requirements relating to the provision of information or payment of administrative charges. The Administrator may issue “civil penalty notices” to persons who breach the relevant provisions.
308. Subsection (3) allows an order to set a maximum penalty. But no penalty may be imposed on a defaulter which exceeds 10 per cent of the turnover of the defaulter’s business.
309. Subsections (4) to (6) set out the procedure for the issuing and payment of penalties under the section.
310. Subsection (7) requires the Administrator to pay any penalty sums received to the Secretary of State, who in turn must pay them into the Consolidated Fund.

### ***Section 130: Objections to civil penalties***

311. This section allows persons issued with a civil penalty notice to give a notice of objection to the Administrator. Subsection (1) sets out the possible grounds for objection. Subsection (2)(b) requires any notice of objection to be given in the manner and timeframe specified in the order.
312. Subsection (3) requires the Administrator to consider any notice of objection. The Administrator must then notify the objector of its decision in the manner and timeframe specified in the order (subsection (5)). In the meantime, the Administrator cannot enforce the penalty (subsection (4)). The original civil penalty notice will be amended or reissued as appropriate (subsection (6)).

***Section 131: Appeals against civil penalties***

313. This section provides for persons issued with a civil penalty notice to appeal to the courts, on the grounds stated in subsection (1). The merits of the Administrator's decision would be considered in a rehearing of the matter.
314. Subsection (6) allows an appeal to the courts to be brought even where a notice of objection has been given to the Administrator in respect of the same matter, and regardless of the outcome of that objection process.

***Section 132: Interpretation***

315. This section defines words and phrases used in sections 124 to 131. The definition of "renewable transport fuel" in subsection (1) covers biofuel, blended biofuel, and any other fuel produced from renewable energy sources (e.g. some forms of hydrogen). In addition, the section allows an order to designate any other description of fuel as being a RTF for the purposes of an RTFO, for example, a fuel produced (wholly or partly) from renewable sources that might be developed or become available in the future or which might be identified as part of the consultation process.
316. The definition of "transport fuel supplier" in subsection (1) essentially allows an RTFO to be placed on persons who supply fossil fuels, renewable transport fuels or any other transport fuel with a view to it being used for transport purposes (see the definition of "supply" in subsection (1) as well as subsection (3) in relation to transport purposes). This may include persons who are refiners, producers, blenders, distributors or retailers of fuel.
317. The definition of "biomass" in subsection (4) refers to the biodegradable portion of a specified product, waste or residue. There is a wide spectrum of waste streams capable of use for producing biofuel. The subsection allows for an Order to determine which would qualify under the definition for the purposes of an RTFO.