



Energy Act 2004

2004 CHAPTER 20

PART 2

SUSTAINABILITY AND RENEWABLE ENERGY SOURCES

CHAPTER 5

RENEWABLE TRANSPORT FUEL OBLIGATIONS

124 Imposition of renewable transport fuel obligations

- (1) The Secretary of State may by order impose on each transport fuel supplier of a specified description the obligation mentioned in subsection (2) (a “renewable transport fuel obligation”).
- (2) That obligation is an obligation, for each specified period, for the supplier to produce to the Administrator, by the specified date, evidence which—
 - (a) is of the specified kind and in the specified form; and
 - (b) shows that during the specified period the specified amount of renewable transport fuel was supplied at or for delivery to places in the United Kingdom.
- (3) An order under subsection (1) is referred to in this Chapter as an “RTF order”.
- (4) Before making an RTF order the Secretary of State must consult such persons appearing to him to represent persons whose interests will be affected by the order, and such other persons, as he considers appropriate.
- (5) The power to make an RTF order is subject to the affirmative resolution procedure.

125 The Administrator

- (1) An RTF order may, for the purposes of provision made by or under this Chapter, appoint a person as the Administrator.

Status: This is the original version (as it was originally enacted).

- (2) Such an order may—
 - (a) confer or impose powers and duties on the Administrator for purposes connected with the implementation of provision made by or under this Chapter;
 - (b) confer discretions on the Administrator in relation to the making of determinations under such an order and otherwise in relation to his powers and duties; and
 - (c) impose duties on transport fuel suppliers for purposes connected with the Administrator’s powers and duties.
- (3) The powers that may be conferred on the Administrator by virtue of subsection (2) include, in particular—
 - (a) power to require a transport fuel supplier to provide him with such information as he may require for purposes connected with the carrying out of the Administrator’s functions;
 - (b) power to impose requirements as to the form in which such information must be provided and as to the period within which it must be provided;
 - (c) power to impose charges of specified amounts on transport fuel suppliers.
- (4) Sums received by the Administrator by virtue of provision within subsection (3)(c) must be used by him for the purpose of meeting costs incurred by him in carrying out his functions as the Administrator.
- (5) The duties that may be imposed by virtue of subsection (2)(c) include, in particular, duties framed by reference to determinations made by the Administrator.
- (6) Only the following persons may be appointed as the Administrator—
 - (a) a body or other person established or appointed by or under any enactment to carry out other functions;
 - (b) a body established by virtue of subsection (8).
- (7) Where provision is made by an RTF order for the appointment of a body or other person within subsection (6)(a), such an order may make such modifications of any enactment relating to that body or person as the Secretary of State considers appropriate for the purpose of facilitating the carrying out of the functions of the Administrator.
- (8) An RTF order may—
 - (a) establish a body corporate to be appointed as the Administrator;
 - (b) make provision for the appointment of members of that body;
 - (c) make provision in relation to the staffing of that body;
 - (d) make provision in relation to the expenditure of that body;
 - (e) make provision regulating the procedure of that body;
 - (f) make any other provision that the Secretary of State considers appropriate for purposes connected with the establishment and maintenance of that body.
- (9) The provision that may be made by virtue of subsection (8) in relation to a body corporate includes, in particular, provision conferring discretions on—
 - (a) the Secretary of State;
 - (b) the body itself; or
 - (c) members or staff of the body.

Status: This is the original version (as it was originally enacted).

- (10) The Secretary of State may make grants to the Administrator on such terms as the Secretary of State may determine.

126 Determinations of amounts of transport fuel

- (1) An RTF order may 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.
- (2) The provision that may be made by virtue of this section includes, in particular—
- (a) provision for amounts of renewable transport fuel to count towards discharging a renewable transport fuel obligation for a period only if the fuel is of a specified description;
 - (b) provision for amounts of renewable transport fuel of a specified description to count towards discharging such an obligation only up to a specified amount;
 - (c) provision for such an obligation not to be treated as discharged unless a specified minimum amount of renewable transport fuel of a specified description has been counted towards its discharge;
 - (d) provision for only such proportion of any renewable transport fuel of a specified description as is attributable to a specified substance, source of energy, method, process or other matter to count towards discharging such an obligation;
 - (e) provision as to how that proportion is to be determined;
 - (f) provision for an amount of renewable transport fuel of a specified description to count towards discharging such an obligation only if, or to the extent that, specified conditions are satisfied in relation to its supply, the person by or to whom it was supplied or the place at or for delivery to which it was supplied;
 - (g) provision for evidence produced by a supplier in relation to any fuel not to count for the purposes of his renewable transport fuel obligation for a period if evidence in relation to the same fuel has previously been produced (whether by him or by another supplier);
 - (h) provision for evidence produced by a supplier in relation to any fuel not to count for those purposes if, after the supply to which the evidence relates, the fuel is supplied by any person at or for delivery to a place outside the United Kingdom or a specified part of the United Kingdom;
 - (i) provision about the measurement of amounts of different descriptions of transport fuel;
 - (j) provision for units of transport fuel of a specified description to count for more or less than the same units of transport fuel of other descriptions;
 - (k) provision about how measurements in different units of different descriptions of transport fuel are to be aggregated;
 - (l) provision for the application of presumptions where specified matters are shown.
- (3) The provision that may be made by virtue of this section also includes, in particular, provision which—
- (a) is made having regard to one or more of the effects mentioned in subsection (4) (whether in the United Kingdom or elsewhere); or
 - (b) requires regard to be had to one or more such effects.
- (4) Those effects are the effects of the production, supply or use of fuel of a particular description on—

Status: This is the original version (as it was originally enacted).

- (a) carbon emissions;
- (b) agriculture;
- (c) other economic activities;
- (d) sustainable development; or
- (e) the environment generally.

127 Renewable transport fuel certificates

- (1) An RTF order may make provision for the Administrator to issue certificates to transport fuel suppliers (“RTF certificates”).
- (2) An RTF certificate is to certify—
 - (a) that the supplier to whom it is issued has supplied the amount of renewable transport fuel stated in the certificate;
 - (b) that that amount of such fuel was supplied by him during the period stated in the certificate;
 - (c) that that amount of such fuel was supplied by him during that period at or for delivery to a place in the United Kingdom or in the part of the United Kingdom stated in the certificate; and
 - (d) the other specified facts.
- (3) Such a certificate may be issued to a supplier only if—
 - (a) he applies for it in the specified manner;
 - (b) his application includes evidence of the specified kind and in the specified form; and
 - (c) the other specified conditions are satisfied.
- (4) An RTF order may authorise transfers of RTF certificates (whether for a consideration or otherwise) between persons of specified descriptions.
- (5) Such an order may also provide that such a transfer is not to be effective unless—
 - (a) the specified details of it have been notified to the Administrator in the specified manner and within the specified time; and
 - (b) the other specified requirements have been complied with.
- (6) If a supplier produces an RTF certificate to the Administrator, it is to count for the purposes of section 124(2) as sufficient evidence of the facts certified.
- (7) An RTF order may provide that, in specified circumstances, evidence produced by virtue of subsection (6) may count to the specified extent towards the discharge of a renewable transport fuel obligation for a period even if it is produced after the time by which evidence had to be produced for the purposes of that obligation.
- (8) Such an order may also provide that, in specified circumstances, evidence produced by virtue of subsection (6) may count to the specified extent towards the discharge of a renewable transport fuel obligation for a period that is later than the period stated in the certificate in question in accordance with subsection (2)(b).

128 Discharge of obligation by payment

- (1) An RTF order may provide that a person who does not wholly discharge his renewable transport fuel obligation for a period by the production of evidence must pay the Administrator the specified sum within the specified period.
- (2) The provision that may be made by virtue of subsection (1) includes, in particular, provision—
 - (a) for the specified sum to increase, in cases where that sum is not paid within a specified period, at the specified rate until it is paid or until the occurrence of a specified event;
 - (b) for specified amounts to be adjusted from time to time for inflation in the specified manner;
 - (c) for the repayment of sums in cases where provision made by virtue of section 127(7) applies in relation to a person;
 - (d) prohibiting the Administrator from taking steps to recover the specified sum or a part of that sum if specified conditions are satisfied.
- (3) Provision within subsection (2)(b) may refer, in particular, to a specified index or to other data, including any index or data as modified from time to time after the coming into force of the order.
- (4) An RTF order may provide that, in a case in which the amount of payments by virtue of subsection (1) which the Administrator has received by the specified time in respect of renewable transport fuel obligations for any period falls short of the amount due in respect of that period, the persons who—
 - (a) were subject to renewable transport fuel obligations for that period, and
 - (b) are of a specified description,must, within the specified period and in the specified circumstances, each make a payment (or further payment) to the Administrator of an amount calculated in the specified manner.
- (5) The provision that may be made by virtue of subsection (4) includes, in particular, provision for the making of adjustments and repayments after a requirement to make payments has already arisen.
- (6) An RTF order may require the Administrator to use, to the specified extent, the sums received by him by virtue of this section for the purpose of meeting costs incurred by him in carrying out his functions as the Administrator.
- (7) To the extent the Administrator does not so use the sums so received, they must be paid by him to transport fuel suppliers, or to transport fuel suppliers of a specified description, in accordance with the specified system of allocation.

129 Imposition of civil penalties

- (1) An RTF order may—
 - (a) designate a provision made by or under this Chapter for the purposes of this section; and
 - (b) provide that a person is to be liable to a civil penalty if—
 - (i) he contravenes that provision; and
 - (ii) any other specified conditions are satisfied.

Status: This is the original version (as it was originally enacted).

- (2) Where the Administrator is satisfied that a person (the “defaulter”) is so liable, he may give a notice to the defaulter in the specified manner (a “civil penalty notice”) imposing on the defaulter a penalty of such amount as the Administrator considers appropriate.
- (3) That penalty must not exceed the lesser of—
 - (a) the specified amount; and
 - (b) the amount equal to ten per cent of the turnover, as determined in the specified manner, of the specified business of the defaulter.
- (4) The civil penalty notice must—
 - (a) set out the Administrator’s reasons for deciding that the defaulter is liable to a penalty;
 - (b) state the amount of the penalty that is being imposed;
 - (c) set out a date before which the penalty must be paid to the Administrator;
 - (d) describe how payment may be made;
 - (e) explain the steps that the defaulter may take if he objects to the penalty; and
 - (f) set out and explain the powers of the Administrator to enforce the penalty.
- (5) The date for the payment of the penalty must not be less than 14 days after the giving of the civil penalty notice.
- (6) A penalty imposed by virtue of this section must be paid to the Administrator—
 - (a) by the date set out in the civil penalty notice by which it is imposed; and
 - (b) in a manner described in that notice.
- (7) Sums received by the Administrator by virtue of this section must be paid to the Secretary of State, who must pay them into the Consolidated Fund.

130 Objections to civil penalties

- (1) A person to whom a civil penalty notice is given may give notice to the Administrator that he objects to the penalty on one or both of the following grounds—
 - (a) that he is not liable to pay it;
 - (b) that the amount of the penalty is too high.
- (2) The notice of objection—
 - (a) must set out the grounds of the objection and the objector’s reasons for objecting on those grounds; and
 - (b) must be given to the Administrator in the specified manner and within the specified period after the giving of the civil penalty notice.
- (3) The Administrator must consider a notice of objection given in accordance with this section and may then—
 - (a) cancel the penalty;
 - (b) reduce it;
 - (c) increase it; or
 - (d) confirm it.
- (4) The Administrator must not enforce a penalty in respect of which he has received a notice of objection before he has notified the objector of the outcome of his consideration of the objection.

- (5) That notification of the outcome of his consideration must be given, in the specified manner—
 - (a) before the end of the specified period; or
 - (b) within such longer period as he may agree with the objector.
- (6) Where, on consideration of an objection, the Administrator increases the penalty, he must give the objector a new civil penalty notice; and, where he reduces it, the notification mentioned in subsection (5) must set out the reduced amount.

131 Appeals against civil penalties

- (1) A person to whom a civil penalty notice is given may appeal to the court on one or both of the following grounds—
 - (a) that he is not liable to pay the penalty;
 - (b) that the amount of the penalty is too high.
- (2) An appeal under this section must be brought within such period after the giving of the civil penalty notice as may be set out in rules of court.
- (3) On an appeal under this section, the court may—
 - (a) allow the appeal and cancel the penalty;
 - (b) allow the appeal and reduce the penalty; or
 - (c) dismiss the appeal.
- (4) An appeal under this section is to be by way of a rehearing of the Administrator’s decision to impose the penalty.
- (5) The matters to which the court may have regard when determining an appeal under this section include all matters that the court considers relevant, including—
 - (a) matters of which the Administrator was unaware when he made his decision; and
 - (b) matters which (apart from this subsection) the court would be prevented from having regard to by virtue of rules of court.
- (6) An appeal under this section may be brought in relation to a penalty irrespective of whether a notice of objection under section 130 has been given in respect of that penalty or whether there has been an increase or reduction under that section.
- (7) In this section “the court” means—
 - (a) in England and Wales or Northern Ireland, the High Court; and
 - (b) in Scotland, the Court of Session.

132 Interpretation of Chapter 5 of Part 2

- (1) In this Chapter—
 - “Administrator” means the person appointed by virtue of section 125 as the Administrator for the purposes of provision made by or under this Chapter;
 - “biofuel” means liquid or gaseous fuel that is produced wholly from biomass;
 - “blended biofuel” means liquid or gaseous fuel consisting of a blend of biofuel and fossil fuel;
 - “civil penalty notice” has the meaning given by section 129(2);

Status: This is the original version (as it was originally enacted).

“renewable transport fuel” means—

- (a) biofuel;
- (b) blended biofuel;
- (c) any solid, liquid or gaseous fuel (other than fossil fuel or nuclear fuel) which is produced—
 - (i) wholly by energy from a renewable source; or
 - (ii) wholly by a process powered wholly by such energy; or
- (d) any solid, liquid or gaseous fuel which is of a description of fuel designated by an RTF order as renewable transport fuel;

“renewable transport fuel obligation” has the meaning given by section 124(1);

“RTF order” has the meaning given by section 124(3);

“specified” means specified in, or determined in accordance with, an RTF order;

“supply” means, in relation to fuel, the supply of that fuel to any person with a view to its being used (whether by that person or persons to whom it is subsequently supplied) wholly or primarily for transport purposes;

“transport fuel” means—

- (a) renewable transport fuel;
- (b) fossil fuel; or
- (c) any solid, liquid or gaseous fuel that is neither renewable transport fuel nor fossil fuel;

“transport fuel supplier” means a person who, in the course of any business of his, supplies transport fuel at or for delivery to places in the United Kingdom.

- (2) For the purposes of this section a process powered by electricity that was generated by energy from a particular source is to be treated as being powered by energy from that source.
- (3) For the purposes of this section fuel is used for transport purposes if—
 - (a) it is used as fuel for one or more of the following, namely, vehicles, vessels, aircraft, trains or any other mode of transport; or
 - (b) it is used for producing fuel that is intended to be so used.
- (4) In this section—
 - “biomass” means the biodegradable portion of a specified product, waste or residue;
 - “fossil fuel” has the same meaning as in section 32 of the 1989 Act;
 - “renewable source” means, in relation to energy, any of the following sources of energy—
 - (a) wind;
 - (b) solar heat;
 - (c) water (including waves and tides);
 - (d) geothermal sources; or
 - (e) biomass.