

2007 No. 3072

TRANSPORT

ENERGY

SUSTAINABLE AND RENEWABLE FUELS

The Renewable Transport Fuel Obligations Order 2007

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THE SCHEDULE — The Office of the Renewable Fuels Agency

The Secretary of State makes the following Order in exercise of the powers conferred by sections 124 to 130, 132(1), 132(4) and 192(4)(c) of the Energy Act 2004(a).

A draft of this Order was laid before Parliament in accordance with sections 124(5) and 192(3) of that Act and approved by a resolution of each House of Parliament.

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

PART 1
INTRODUCTORY PROVISIONS

Citation and commencement

1. This Order may be cited as the Renewable Transport Fuel Obligations Order 2007 and comes into force on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

“the 1979 Act” means the Hydrocarbon Oil Duties Act 1979(a);

(a) 2004 c.20.

“the 2004 Act” means the Energy Act 2004;

“account holder” has the meaning given in article 7(8);

“buy-out fund” has the meaning given in article 22(2)(d);

“Chief Executive” means the person appointed as such pursuant to paragraph 1 of the Schedule;

“connected person” means, in relation to a transport fuel supplier, a person connected to the supplier within the meaning of section 839 of the Income and Corporation Taxes Act 1988**(b)**;

“non-obligated supplier” means a transport fuel supplier other than one upon whom a renewable transport fuel obligation is imposed under article 4;

“obligation period” has the meaning given in article 4(3)(a);

“obligated supplier” means a transport fuel supplier upon whom a renewable transport fuel obligation is imposed under article 4;

“road vehicle” means a vehicle constructed or adapted for use on roads, but does not include any vehicle which is an excepted vehicle within the meaning given by the 1979 Act**(c)**;

“RTF account” means an account which is established pursuant to article 7; and

“working day” means any day other than—

- (a) Saturday or Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971**(d)** in any part of the United Kingdom.

(2) For the purposes of this Order and of section 132(4) of the 2004 Act, “biomass” means the biodegradable portion of—

- (a) products, wastes and residues from agriculture, forestry and related activities, or
- (b) industrial and municipal waste.

Definitions of fuels and fuel products

3.—(1) The following paragraphs of this article define the various descriptions of fuels and fuel products referred to in this Order.

(2) “Bioblend”, “biodiesel”, “bioethanol” and “bioethanol blend” have the same meaning as in the 1979 Act**(e)**.

(3) “Fossil fuel” means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products.

(4) “Heavy oil” has the same meaning as in the 1979 Act**(f)**.

(5) “Hydrocarbon oil” has the same meaning as in the 1979 Act**(g)**.

(6) “Natural road fuel gas” has the same meaning as in the 1979 Act**(h)**.

(a) 1979 c.5.

(b) 1988 c.1. Section 839 was amended by the Finance Act 1995 (c.4), section 74 and Schedule 17, paragraph 20, the Income Tax (Trading and Other Income) Act 2005 (c.5), section 882(1) and Schedule 1, paragraphs 1 and 341; the Finance Act 2006 (c.25), section 89 and Schedule 13, Part 2, paragraphs 7, 25 and 27; S.I. 1997/1154, regulation 15; and S.I. 2005/3229, regulations 47 and 100.

(c) Schedule 1 to the 1979 Act sets out the meaning of “excepted vehicle”; Schedule 1 to the 1979 Act was substituted by the Finance Act 1995 (c.4), section 8(2) and (3), and was amended by the Finance Act 2000 (c.17), sections 9, 156, Schedule 40, Part 1(1), and S.I. 2007/93.

(d) 1971(c.80).

(e) The expression “bioblend” is defined in section 6AB(2) of the 1979 Act, as inserted by the Finance Act 2002 (c.23), section 5(1) and (4); “biodiesel” is defined in section 2AA(1) of the 1979 Act, as inserted by the Finance Act 2002, section 5(1) and (2); “bioethanol” is defined in section 2AB(1) of the 1979 Act, as inserted by the Finance Act 2004 (c.12), section 10(1); and “bioethanol blend” is defined in section 6AE of the 1979 Act, as inserted by the Finance Act 2004, section 10(3).

(f) The expression “heavy oil” is defined in section 1(4) of the 1979 Act.

(g) The expression “hydrocarbon oil” is defined in section 1(2) of the 1979 Act.

(h) The expression “natural road fuel gas” is defined in section 5(2) of the 1979 Act, as inserted by the Finance Act 2004 (c.12), section 6(1).

(7) “Natural gas” means any gas derived from natural strata.

(8) “Petroleum products” means the following substances produced directly or indirectly from crude, that is to say, fuels, lubricants, bitumen, wax, industrial spirits and any wide-range substance (meaning a substance whose final boiling point at normal atmospheric pressure is more than 50°C higher than its initial boiling point).

(9) “Rebated” has the same meaning as in the 1979 Act(a).

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

(a) fossil fuel,

(b) chargeable to the duty of excise on hydrocarbon oil under section 6 of the 1979 Act(b), and

(c) for use as fuel in road vehicles (whether or not it may also be used in other vehicles).

(11) “Road transport fuel” means transport fuel which is for use as fuel in road vehicles (whether or not it may also be used in other vehicles).

(12) For the purposes of this Order and of the definition of “renewable transport fuel” in section 132(1) of the 2004 Act, biodiesel and natural road fuel gas are designated as renewable transport fuel.

PART 2

RENEWABLE TRANSPORT FUEL OBLIGATIONS

The renewable transport fuel obligation

4.—(1) A renewable transport fuel obligation is imposed on every transport fuel supplier who in a specified period—

(a) owns relevant hydrocarbon oil at the time when the requirement to pay the duty of excise with which the oil is chargeable takes effect, and

(b) supplies that oil at or for delivery to places in the United Kingdom.

(2) But this obligation does not apply to a transport fuel supplier who, in a specified period, supplies less than 450,000 litres in total of the oil (a “non-obligated supplier”).

(3) For the purposes of section 124(2) of the 2004 Act and this Order—

(a) a “specified period” means a period beginning on 15th April in a year and ending on 14th April in the following year, and this period is referred to in this Order as an “obligation period”;

(b) the “specified date” means 5th October (or the next working day after 5th October, if 5th October is not a working day) following the end of the obligation period in question; and

(c) the evidence which is required is one or more RTF certificates issued by the Administrator in accordance with this Order.

(4) For the purposes of section 124(2) of the 2004 Act and this Order, “the specified amount” of renewable transport fuel is determined as follows—

(a) calculate the volume of relevant hydrocarbon oil which the supplier has supplied at or for delivery to places in the United Kingdom during the obligation period in question;

(a) The expression “rebated” is defined in section 27(1) of the 1979 Act, as amended by the Finance Act 2002, Schedule 3, Part 2, paragraphs 5 and 9, the Finance Act 1987 (c.16), section 1(3), and the Finance Act 2001 (c.9), section 3(3).

(b) Section 6 was amended by: the Finance Act 1982 (c.39), section 4(2); the Finance Act 1989 (c.26), section 1; the Finance Act 1990 (c.29), Schedule 19, Part 1; the Finance Act 1981 (c.35), section 4(1); the Finance Act 1997 (c.16), section 7(2), (3) and (4); the Finance Act 2000 (c.17), section 5(3); the Finance Act 2006 (c.25), section 7(1) and (2); the Finance Act 2004 (c.12), section 7(5); the Finance Act 2005 (c.7), section 4(1) and (3); and the Finance Act 2007 (c.11), section 10. There are also other amendments to section 6 which are not yet in force.

- (b) in any case where the supplier has supplied less than 10 million litres in total of relevant hydrocarbon oil, deduct the first 450,000 litres of such oil; and
- (c) in relation to the volume of such oil calculated in accordance with sub-paragraphs (a) and (b)—
 - (i) for the obligation period beginning on 15th April 2008, the specified amount is an amount equal to 2.5641% of that volume;
 - (ii) for the obligation period beginning on 15th April 2009, the specified amount is an amount equal to 3.8961% of that volume; and
 - (iii) for each subsequent obligation period, the specified amount is an amount equal to 5.2632% of that volume.

Determinations of amounts of transport fuel

5.—(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, unless the contrary is shown, that that amount of fuel is supplied by that person at or for delivery to places in the United Kingdom at that time.

(2) 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 (whether or not it may also be used in other vehicles),
- (b) it is of one of the descriptions set out in paragraph (3), and
- (c) the condition set out in paragraph (4) is satisfied.

(3) The descriptions are—

- (a) biodiesel in relation to which a duty of excise is chargeable under the 1979 Act(a);
- (b) the biodiesel component in bioblend, where a duty of excise is chargeable in relation to that bioblend under the 1979 Act(b);
- (c) the biodiesel component in a mixture which is produced by mixing—
 - (i) fully or partially rebated heavy oil, with
 - (ii) biodiesel or a substance containing biodiesel,
 where a duty of excise is chargeable in relation to that mixture under the 1979 Act(c);
- (d) bioethanol in relation to which a duty of excise is chargeable under the 1979 Act(d);
- (e) the bioethanol component of bioethanol blend, where a duty of excise is chargeable in relation to that bioethanol blend under the 1979 Act(e); or
- (f) natural road fuel gas—

(a) The duty of excise on biodiesel is chargeable under section 6AA of the 1979 Act, as inserted by the Finance Act 2002 (c.23), section 5(1) and (4), and amended by the Finance Act 2004 (c.12), Schedule 42, Part 1(1), and section 11(1), and the Finance Act 2007 (c.11), section 10(1) and (3).

(b) The duty of excise on bioblend is chargeable under section 6AB of the 1979 Act, as amended by the Finance Act 2002, section 5, Schedule 2, paragraphs 1, 7(1) and (2), and Schedule 40, Part 1(2).

(c) The duty of excise on such a mixture is chargeable under section 20AAA of the 1979 Act, as inserted by the Finance Act 2004 (c.12), section 9(1).

(d) The duty of excise on bioethanol is chargeable under section 6AD of the 1979 Act, as inserted by the Finance Act 2004, section 10(3), and amended by the Finance Act 2007 (c.11), section 10(1) and (4).

(e) The duty of excise on bioethanol blend is chargeable under section 6AE of the 1979 Act, as inserted by the Finance Act 2004, section 10(3).

- (i) in relation to which a duty of excise is chargeable under the 1979 Act^(a); and
- (ii) which is produced wholly from biomass.

(4) The condition is that the person who applies for the fuel to count is the person who owns the fuel at the time when the requirement to pay the duty of excise with which the fuel is chargeable takes effect.

(5) For the purposes of calculating the specified amount under article 4(4), one kilogram of the renewable transport fuel referred to in paragraph (3)(f) must be treated as equivalent to one litre of a renewable transport fuel referred to in paragraph (3)(a) to (e).

(6) The amount of the biodiesel component referred to in paragraph (3)(b) or (c), and of the bioethanol component referred to in paragraph (3)(e), must each be measured by its volume.

PART 3

THE ADMINISTRATOR

The Administrator

6.—(1) The Office of the Renewable Fuels Agency is established as a body corporate and is appointed as the Administrator pursuant to section 125 of the 2004 Act.

(2) The Schedule (which makes provision about the Administrator) has effect.

Establishment of RTF Accounts

7.—(1) The Administrator must establish and maintain an account, in which the balance of RTF certificates held and other matters are to be recorded, for each person who—

- (a) is, or is likely to become, subject to a renewable transport fuel obligation,
- (b) applies for an account, and
- (c) satisfies the Administrator that the person is a transport fuel supplier.

(2) A person must apply for an account under paragraph (1) not later than the end of the period of 28 days beginning on the date on which the person becomes an obligated supplier.

(3) The Administrator may establish and maintain an account for each of the following who applies for an account—

- (a) any transport fuel supplier who is not, and is not likely to become, subject to a renewable transport fuel obligation, and
- (b) any other person who intends to trade or invest in RTF certificates.

(4) The Administrator may not establish an account for a supplier or other person referred to in paragraph (3) unless the Administrator is satisfied that the supplier or other person—

- (a) has good reason to hold an account, and
- (b) has consented to allowing the Administrator such access to premises (other than a dwelling), computers, records, or documents, as the Administrator may require in order to verify information given by the supplier or other person.

(5) A supplier or other person who applies for an account under this article must provide such information or produce such evidence (or both) to the Administrator as the latter may reasonably request in order to satisfy the Administrator that—

- (a) in the case of an application under paragraph (1), the person is a transport fuel supplier, or

^(a) The duty of excise on road fuel gas is chargeable under section 8 of the 1979 Act, as amended by the Finance Act 1995 (c.4), sections 9 and 162, Schedule 29, Part 2, the Finance Act 2004, section 6(2), and the Finance Act 2007 (c.11), section 10(1) and (5). The expression “road fuel gas” is defined in section 5(1) of the 1979 Act as amended by the Finance Act 2004 (c.12), section 6(4).

(b) in the case of an application under paragraph (3), the supplier or other person has good reason to hold an account and has consented to access as referred to in paragraph (4)(b).

(6) A supplier or other person who applies for an account under this article must ensure that the information provided or evidence produced is accurate to the best of the supplier's or other person's knowledge and belief.

(7) The Administrator may reject any application under this article if the Administrator reasonably believes that—

- (a) the information provided to the Administrator under this article is inaccurate or incomplete, or
- (b) in the case of an application under paragraph (3), the supplier or other person does not have good reason to hold an account or has not consented to access as referred to in paragraph (4)(b).

(8) An “account holder” is a supplier or other person for whom the Administrator establishes an account pursuant to this article.

(9) The accounts referred to in this article must be established and maintained in electronic form or in such other form as the Administrator determines is appropriate (or in both forms).

Power of the Administrator to require further information or evidence

8.—(1) Where the Administrator has reason to believe that an account holder for whom an account has been established pursuant to paragraph (1) of article 7—

- (a) is not subject, and is not likely to become subject, to a renewable transport fuel obligation, or
- (b) does not have good reason to hold an account,

the Administrator may require the account holder to provide such information or produce such evidence (or both) to the Administrator as may be necessary for the Administrator to become satisfied as to whether the account holder is subject, or is likely to become subject, to the renewable transport fuel obligation, or has good reason to hold an account, as the case may be.

(2) Where the Administrator has reason to believe that an account holder for whom an account has been established pursuant to paragraph (3) of article 7 does not have good reason to hold an account, the Administrator may require the account holder to provide such information or produce such evidence (or both) to the Administrator as may be necessary for the Administrator to become satisfied that the account holder does have good reason to hold an account.

(3) An account holder must—

- (a) provide the information or produce the evidence required under this article, and
- (b) ensure that the information provided or evidence produced is accurate to the best of the account holder's knowledge or belief.

Closures of accounts

9.—(1) This article applies in the case of an account holder who is a supplier or other person referred to in paragraph (3) of article 7.

(2) The Administrator must close the account of such an account holder where—

- (a) the Administrator—
 - (i) is no longer satisfied that the account holder meets the criterion set out in paragraph (4)(a) of that article, or
 - (ii) is satisfied that the account holder has withdrawn the consent which was given under paragraph (4)(b) of that article; and
- (b) any certificates standing to the credit of the account have been revoked or otherwise may no longer be produced as evidence pursuant to section 124(2) of the 2004 Act.

(3) The Administrator may close the account of such an account holder where, in the immediately preceding period of 36 months—

- (a) no RTF certificate has been issued to the account holder, or
- (b) no RTF certificate has been credited to the account of the account holder.

Managing accounts

10. Subject to the provisions in this Part, the Administrator may manage accounts, including amending details of accounts, and consolidating the accounts of account holders, as the Administrator thinks fit.

Processing of information and evidence

11.—(1) The Administrator must—

- (a) record and retain information submitted for the purpose of—
 - (i) establishing that a transport fuel supplier is, or reasonably expects to be, subject to a renewable transport fuel obligation, or
 - (ii) calculating the amount of renewable transport fuel for which a transport fuel supplier is required to produce evidence under article 4(3)(c),
- (b) record and retain information which is submitted by an account holder in support of an application for an RTF certificate,
- (c) record each RTF certificate which is issued, and
- (d) correct any error which is discovered in information stored by the Administrator in relation to an account.

(2) The period for which the Administrator must retain any information pursuant to paragraph (1) is such period as the Administrator considers is reasonable, but it must not be a period of less than ten years beginning on the date of receipt of the information.

(3) The Administrator may record and retain, for purposes connected with the carrying out of the Administrator’s functions, such other information as the Administrator thinks fit.

Duty to require information from obligated suppliers

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

- (a) whether the supplier has supplied any relevant hydrocarbon oil at or for delivery to places in the United Kingdom during each relevant period,
- (b) whether the supplier has supplied any renewable transport fuel at or for delivery to places in the United Kingdom during each relevant period,
- (c) the amount of any relevant hydrocarbon oil which has been—
 - (i) supplied by the supplier at or for delivery to places in the United Kingdom during each relevant period, or
 - (ii) received by the supplier from another transport fuel supplier at places in the United Kingdom during each relevant period; and
- (d) the amount of any relevant renewable transport fuel which is—
 - (i) for use as fuel in road vehicles (whether or not it may also be used in other vehicles), and
 - (ii) of one of the descriptions set out in article 5(3).

(2) In paragraph (1)—

- (a) a “relevant period” means a period beginning on the 15th day of each month and ending on the 14th day of the following month during an obligation period, and

- (b) “relevant renewable transport fuel” means renewable transport fuel which is—
 - (i) 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 each relevant period, or
 - (ii) received by the supplier from another transport fuel supplier at places in the United Kingdom during each relevant period.
- (3) The Administrator must impose requirements as to—
 - (a) the form in which the information must be provided,
 - (b) the methodology to be used in calculating and providing the information, and
 - (c) the period within which it must be provided.
- (4) The supplier must provide the information required under this article and ensure that it is—
 - (a) accurate to the best of the supplier’s knowledge and belief, and
 - (b) provided in such form, and using such methodology, and within such period, as the Administrator requires.
- (5) The Administrator may require a transport fuel supplier to produce such evidence as the Administrator may determine is necessary in order to substantiate information which the supplier has provided to the Administrator under this article.
- (6) A transport fuel supplier must—
 - (a) produce such evidence where so required, and
 - (b) ensure that that evidence is accurate to the best of the supplier’s knowledge and belief.

Power to require information

13.—(1) The Administrator may impose a requirement on a transport fuel supplier to provide the Administrator with such information as the Administrator may require for purposes connected with the carrying out of the Administrator’s functions.

- (2) The Administrator may impose requirements as to—
 - (a) the form in which the information must be provided,
 - (b) the methodology to be used in calculating and providing the information, and
 - (c) the period within which it must be provided.

(3) Without prejudice to the generality of paragraph (1), the Administrator may require a non-obligated transport fuel supplier to provide the Administrator with the information, in relation to that supplier, which is referred to in paragraph (1)(a) to (d) of article 12; and references in that paragraph to the “relevant period” are to be treated as references to such period during an obligation period as the Administrator notifies to the supplier for the purposes of this paragraph.

(4) Without prejudice to the generality of paragraph (1), the Administrator may require a transport fuel supplier (whether obligated or non-obligated) to provide the Administrator with information as to the effects on—

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

which are or may be associated with the production, supply or use of the renewable transport fuel which has been supplied by the supplier at or for delivery to places in the United Kingdom, and to provide that information in relation to such period during an obligation period as the Administrator notifies to the supplier for the purposes of this paragraph.

(5) Where the Administrator imposes a requirement under this article on a transport fuel supplier to provide information, the supplier must provide that information and ensure that it is—

- (a) accurate to the best of the supplier's knowledge and belief, and
- (b) provided—
 - (i) in such form,
 - (ii) using such methodology,
 - (iii) within such period, and
 - (iv) in relation to such period,
 as the Administrator requires.

(6) The Administrator may require a transport fuel supplier to produce such evidence as the Administrator may determine is necessary in order to substantiate information which the supplier has provided to the Administrator under this article.

(7) A transport fuel supplier must—

- (a) produce such evidence where so required, and
- (b) ensure that that evidence is accurate to the best of the supplier's knowledge and belief.

Duty to report to Parliament

14.—(1) The Administrator must—

- (a) by 31st January 2010 publish an annual report in relation to the obligation period ending on 14th April 2009, and
- (b) by 31st January in each subsequent year publish an annual report in relation to the obligation period ending on the previous 14th April.

(2) Before publishing an annual report under paragraph (1), the Administrator must send a copy of the report to the Secretary of State.

(3) As soon as reasonably practicable after the Secretary of State has received the annual report from the Administrator and the report has been published, the Secretary of State must lay a copy of the report before each House of Parliament.

(4) The report is to include details of—

- (a) the compliance by each obligated supplier with its renewable transport fuel obligation during the obligation period in question, including the extent to which that obligation has been met by the production of RTF certificates or by payments made under article 21;
- (b) the effects on—
 - (i) carbon emissions,
 - (ii) agriculture,
 - (iii) other economic activities,
 - (iv) sustainable development, and
 - (v) the environment generally,

which the Administrator considers, following analysis of information received under this Order from renewable transport fuel suppliers, to be associated with the production, supply or use of the renewable transport fuel which has been supplied at or for delivery to places in the United Kingdom during the obligation period;

- (c) the percentage of such fuel which was of a description specified by the Secretary of State;
- (d) the effectiveness of the Administrator in carrying out the Administrator's duties, including the accuracy of the Administrator's activities under article 11, and the number of RTF certificates issued erroneously;
- (e) the effectiveness of advice given by the Administrator to transport fuel suppliers, and the time taken to provide such advice;
- (f) the effectiveness of the enforcement activities of the Administrator;
- (g) the value for money of the Administrator;

- (h) any calculations, analysis or other matter which is notified by the Secretary of State to the Administrator and is relevant to purposes connected with the implementation of provision made by or under Chapter 5 of Part 2 of the 2004 Act, and
 - (i) any calculations, analysis or other matter which the Administrator considers is appropriate and which is relevant to purposes connected with the implementation of provision made by or under Chapter 5 of Part 2 of the 2004 Act.
- (5) In preparing its annual report the Administrator must exclude from the report, so far as reasonably practicable—
- (a) information as to the amount of relevant hydrocarbon oil or renewable transport fuel which has been notified by a particular supplier to the Administrator under article 12(1)(c) or (d), 13(1) or (3), or 16(3)(c), and
 - (b) any other information from which that amount may be deduced.
- (6) The details of the effects referred to in paragraph (4)(b) are to be reported in relation to such fuel as supplied by individual renewable transport fuel suppliers and in relation to such fuel as supplied by renewable transport fuel suppliers generally.

Other powers and duties conferred and imposed on the Administrator

15.—(1) In addition to the duties imposed upon the Administrator elsewhere in this Order, the Administrator has the following duties—

- (a) to report to the Secretary of State as requested on the amount of—
 - (i) renewable transport fuel, or
 - (ii) renewable transport fuel of a description specified by the Secretary of State, which, following analysis of information received from renewable transport fuel suppliers under article 12, 13 or 16, has been supplied at or for delivery to places in the United Kingdom during a period specified by the Secretary of State;
- (b) to report to the Secretary of State as requested on the effects on—
 - (i) carbon emissions,
 - (ii) agriculture,
 - (iii) other economic activities,
 - (iv) sustainable development, or
 - (v) the environment generally,
 which the Administrator considers, following analysis of information received under this Order from a renewable transport fuel supplier or from renewable transport fuel suppliers generally, to be associated, actually or on average, with the production, supply or use of the renewable transport fuel which has been supplied at or for delivery to places in the United Kingdom during a period specified by the Secretary of State;
- (c) to report to the Secretary of State as requested on—
 - (i) the percentage of such fuel which is of a description specified by the Secretary of State;
 - (ii) the accuracy of, and amount of detail in, the information which is provided to the Administrator under article 13(4) or article 16(3)(d);
- (d) to carry out such calculations or analysis as may be required for the purposes of providing a report referred to in sub-paragraphs (a) to (c) or for other purposes connected with the implementation of provision made by or under Chapter 5 of Part 2 of the 2004 Act;
- (e) to publicise the renewable transport fuel obligation so as to secure that it is brought to the attention of all transport fuel suppliers who are or may be subject to the renewable transport fuel obligation;
- (f) where an RTF certificate is transferred between account holders, to record that fact in the relevant accounts;

- (g) to verify, so far as reasonably practicable, the information supplied pursuant to article 12(1), 13(1), (3) or (4) or 16(3) by each account holder who is a transport fuel supplier;
 - (h) to process buy-out funds;
 - (i) to calculate and disburse payments under article 22, and
 - (j) to ensure, so far as reasonably practicable, that there is no obligated supplier who, having failed to produce the evidence required to discharge fully the renewable transport fuel obligation for an obligation period, is failing to pay the sum due under article 21.
- (2) In addition to the powers conferred upon the Administrator elsewhere in this Order, the Administrator has power—
- (a) to take reasonable steps to promote good working relationships with transport fuel suppliers and others having an interest in the implementation of provision made by or under Chapter 5 of Part 2 of the 2004 Act, and
 - (b) to publish such reports (other than the annual report referred to in article 14) and guidance as the Administrator thinks fit for purposes connected with the implementation of provision made by or under that Chapter.
- (3) But the Administrator must exclude from any reports referred to in paragraph (1) or (2), so far as reasonably practicable—
- (a) information as to the amount of relevant hydrocarbon oil or renewable transport fuel which has been notified by a particular supplier to the Administrator under article 12(1)(c) or (d), 13(1) or (3), or 16(3)(c), and
 - (b) any other information from which that amount may be deduced.

PART 4

RTF CERTIFICATES

Application for RTF certificates

- 16.**—(1) The manner in which an application for an RTF certificate is to be made is—
- (a) in electronic form, through a website of the Administrator, or
 - (b) in another manner, in a case where the Administrator determines that it is necessary to allow an application in that manner.
- (2) The evidence which must be included in the application is—
- (a) a declaration from a person nominated by the supplier which confirms that the information submitted in the application or referred to in paragraph (3)(b), (c) or (d) is accurate to the best of the person’s knowledge and belief; and
 - (b) such other evidence as the Administrator may reasonably determine is necessary, and in such form as the Administrator may reasonably determine is appropriate, in order to substantiate the information provided by the supplier in relation to the renewable transport fuel.
- (3) For the purposes of section 127(3)(c) of the 2004 Act, the other conditions which must be satisfied for the issue of an RTF certificate are that—
- (a) the supplier has an RTF account;
 - (b) in the case of an obligated supplier, the supplier has provided the Administrator with the information required by the Administrator pursuant to article 12(1);
 - (c) in the case of a non-obligated supplier, the supplier has provided the Administrator with the information, in relation to that supplier, which is referred to in paragraph (1)(d) of article 12; and references in that paragraph to the “relevant period” are to such period during an obligation period as the Administrator notifies to the supplier for the purposes

of article 13(3), or failing such notification, to such period during an obligation period as the Administrator notifies to the supplier for the purposes of this sub-paragraph;

- (d) the supplier (whether obligated or non-obligated) has provided the Administrator with the information referred to in article 13(4); and has provided that information in relation to such period during an obligation period as the Administrator notifies to the supplier for the purposes of article 13(4), or failing such notification, to such period during an obligation period as the Administrator notifies to the supplier for the purposes of this sub-paragraph;
- (e) the Administrator is satisfied that the information provided by the supplier under sub-paragraphs (b), (c) and (d) fulfils the criteria set out in paragraph (5),
- (f) any duty of excise payable on the renewable transport fuel has been paid, and
- (g) the supplier makes the application for the RTF certificate within such period as the Administrator may require.

(4) The person who makes the declaration referred to in paragraph (2)(a) must ensure that the information submitted in the application is accurate to the best of the person's knowledge and belief.

(5) The criteria referred to in paragraph (3)(e) are that the information—

- (a) is accurate, and
- (b) has been provided—
 - (i) in such form,
 - (ii) using such methodology, and
 - (iii) within such period,

as the Administrator notifies for the purposes of article 12(3) or 13(2), as the case may be, or failing such notification, as the Administrator notifies for the purposes of this paragraph.

Issue of RTF certificates

17.—(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 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 5(3),
- (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 an obligation period.

(2) An RTF certificate must be issued as soon as reasonably practicable after an application for it has been made in accordance with article 16.

(3) For the purposes of section 127(2)(d) of the 2004 Act, “the other specified facts” are that the supplier has notified the Administrator of each of the matters listed in section 127(2)(a) to (c).

(4) For the purposes of this Order, the Administrator issues an RTF certificate to a supplier by recording the credit of an RTF certificate in the RTF account of the supplier.

(5) As soon as reasonably practicable after issuing an RTF certificate, the Administrator must notify the supplier of the issue of the certificate, and of the date and time of issue.

(6) As soon as reasonably practicable after receiving a request for the information from an account holder, the Administrator must inform the account holder of the number of RTF certificates (if any) held to the credit of that account holder's RTF account, and of the date and time of issue of those certificates.

Transfers of RTF certificates

18.—(1) A transfer of an RTF certificate may be made between any persons who are account holders.

(2) Such a transfer is not effective unless—

- (a) the transferor notifies the Administrator of the following details of the transfer—
 - (i) the name and account number of the account holder to whom the certificate is transferred,
 - (ii) the date of the transfer (“the notified date”), and
 - (iii) the obligation period in respect of which the certificate was issued;
- (b) the transferor so notifies the Administrator—
 - (i) through a website of the Administrator, or
 - (ii) in another manner, in a case where the Administrator determines that it is necessary to allow notification in that manner;
- (c) the transferor so notifies the Administrator—
 - (i) on the date of the transfer, or
 - (ii) before the date of the transfer, in which case the notification must be within the period of one month ending immediately before the date of the transfer;
- (d) the transfer relates to not more than one transferee;
- (e) the RTF certificate is held to the credit of the transferor’s account at the date and time of the transfer, and
- (f) the Administrator is satisfied that, at the date of the transfer, there is no reason to consider the revocation of the certificate under article 20.

(3) Where—

- (a) a transfer relates to some (but not all) of the RTF certificates held by a transferor on the date of the transfer, and
- (b) the RTF certificates held by the transferor on that date were not all issued at the same date and time,

it is to be presumed, unless the contrary is shown, that the transfer relates to the certificates which were issued at the earlier dates and times.

(4) In the event of there being an insufficient number of certificates held to the credit of a transferor’s account on the notified date to transfer certificates to two or more transferees, the Administrator must give priority to the transfer which was first notified to the Administrator.

(5) For the purposes of this Order, the Administrator transfers an RTF certificate from one account holder (“the transferor”) to another account holder (“the transferee”) by recording a debit of an RTF certificate in the transferor’s RTF account and a credit of an RTF certificate in the RTF account of the transferee.

Use of an RTF certificate in a later obligation period

19.—(1) In the circumstances referred to in paragraph (2), 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 an obligation period that is later than the obligation period stated in the certificate.

(2) The circumstances are that the certificate is produced in relation to the obligation period (“the later period”) which immediately follows the obligation period stated in the certificate.

(3) But an RTF certificate may not count in relation to more than 25% of any renewable transport fuel obligation imposed on that supplier for that later period.

Revocation of an RTF certificate

20.—(1) Subject to the following paragraphs, the Administrator may revoke an RTF certificate where the Administrator is satisfied that—

- (a) the declaration provided in relation to that certificate pursuant to article 16(2)(a) is false,
- (b) the certificate was issued as a consequence of any fraudulent behaviour, statement or undertaking on the part of the transport fuel supplier to whom it was issued or any connected person,
- (c) the information provided to the Administrator in relation to the certificate was materially inaccurate, or
- (d) the evidence provided in relation to the information was insufficient to substantiate it.

(2) Before revoking an RTF certificate, the Administrator must give notice in writing to the transport fuel supplier to whom the certificate was issued and, where the certificate has been transferred to another person to whose credit the certificate is held (a “transferee”), to that other person.

(3) The notice must state—

- (a) that the Administrator is proposing to revoke the RTF certificate,
- (b) the grounds for the proposed revocation,
- (c) that the supplier and any transferee may make representations in writing to the Administrator in relation to the proposed revocation, and
- (d) that any such representations must be made within such period as the Administrator specifies, not being a period of less than 14 days beginning on the date of receipt of the notice.

(4) The Administrator—

- (a) must consider any representations which are made under paragraph (3) and are relevant to the proposed revocation,
- (b) must decide whether to revoke the RTF certificate, but
- (c) may not revoke the certificate—
 - (i) within a period of 28 days beginning on the date of the notice, or
 - (ii) later than the 28th August immediately following the obligation period during which the RTF certificate was issued.

(5) Where the Administrator revokes an RTF certificate, the Administrator must, within a period of seven days beginning on the date of revocation, but in any event not later than the 29th August immediately following the obligation period during which the RTF certificate was issued—

- (a) give notice in writing of such revocation to the supplier to whom the certificate was issued, and to any transferee, and
- (b) state in that notice—
 - (i) the grounds for the revocation,
 - (ii) that the supplier or any transferee (or both) may apply to the Chief Executive by notice in writing to reconsider the revocation, and
 - (iii) the requirements about that notice which are set out in paragraph (7).

(6) Where the Administrator revokes an RTF certificate, the supplier to whom the certificate was issued or any transferee (or both) may apply to the Chief Executive by notice in writing to reconsider the revocation.

(7) Such notice must—

- (a) be given to the Chief Executive within a period of 14 days beginning on the date of receipt of the notice of revocation, but in any event not later than the 12th September immediately following the obligation period during which the RTF certificate was issued,
- (b) set out the grounds for reconsidering the revocation, and

- (c) contain any representations which the supplier or transferee (as the case may be) wishes to make in relation to the reconsideration of the revocation.

(8) The Chief Executive must—

- (a) consider any representations which the supplier or transferee has made under paragraph (7), and
- (b) reconsider the revocation not later than the 28th September immediately following the obligation period in which the RTF certificate was issued.

(9) On reconsidering the revocation, the Chief Executive must—

- (a) re-instate the RTF certificate, or
- (b) confirm the revocation of the certificate on the grounds referred to in paragraph (5)(b)(i) or on other grounds.

(10) Where the Chief Executive is unable to reconsider the revocation, or unable to do so by the date referred to in paragraph (8), another member of the body corporate appointed as the Administrator may reconsider it.

(11) The Administrator must give notice in writing of the decision of the Chief Executive or other member and, in the case of a confirmation of a revocation of an RTF certificate, of the grounds for that revocation, to the supplier to whom the certificate was issued, and to any transferee.

(12) Where—

- (a) neither the Chief Executive nor another member reconsiders the revocation by the date referred to in paragraph (8), or
- (b) an RTF certificate is revoked but is subsequently re-instated,

the certificate is deemed to have been re-instated as at the end of the obligation period to which the certificate relates.

(13) The Administrator, Chief Executive or other member may hold an oral hearing before making a decision on a proposed revocation or on a reconsideration of a revocation (as the case may be).

(14) A person who provides information or produces evidence to the Administrator, Chief Executive or other member in respect of a proposed revocation or a reconsideration of a revocation must ensure that that information or evidence is accurate to the best of the person's knowledge or belief.

PART 5

DISCHARGE OF OBLIGATION

Payments

21.—(1) As soon as reasonably practicable after the end of an obligation period, the Administrator must notify each obligated supplier of the following—

- (a) the amount of renewable transport fuel which the Administrator calculates should, in accordance with section 124(2)(b) of the 2004 Act and article 4(4), have been supplied at or for delivery to places in the United Kingdom during that obligation period, and
- (b) the number of RTF certificates being held to the credit of the supplier's RTF account which may be used as evidence for the purposes of meeting the supplier's renewable transport fuel obligation.

(2) A certificate may be produced as evidence by the supplier pursuant to this Order—

- (a) by means of an electronic submission transmitted to a website of the Administrator, which identifies the credit of a certificate in the supplier's RTF account, or

(b) by other means, in a case where the Administrator determines that it is necessary to allow production of an RTF certificate by those means.

(3) A supplier must notify the Administrator of the number of RTF certificates held in the supplier's RTF account which are to be counted towards the discharge of the supplier's renewable transport fuel obligation for the obligation period in question, and which are to be debited accordingly from the RTF account.

(4) That notification must be given to the Administrator by the specified date referred to in article 4(3)(b).

(5) Where a supplier fails to notify the Administrator of the number of RTF certificates to be counted by the date mentioned in paragraph (4), the Administrator must deem the number to be nil.

(6) A supplier who does not wholly discharge the renewable transport fuel obligation for an obligation period by the production of evidence in accordance with paragraph (2) by the specified date referred to in article 4(3)(b) must pay to the Administrator a sum determined in accordance with paragraph (7).

(7) That sum is determined as follows.

Step 1

Calculate in litres the amount of renewable transport fuel for which the supplier was obligated to produce evidence during the obligation period in question, pursuant to section 124(2) of the 2004 Act and article 4 ("the obligated amount").

Step 2

Calculate in litres the amount of renewable transport fuel which should have been supplied during the obligation period in question, and for which the supplier has produced RTF certificates as evidence in accordance with paragraph (2) ("the actual amount").

Step 3

Calculate the number of litres by which the actual amount falls short of the obligated amount ("the shortfall amount").

Step 4

Subtract the amount of money referred to in the section of the 1979 Act containing the rate of duty for bioethanol(a) from the amount of money referred in the section of that Act containing the rate of duty for sulphur-free petrol(b), as those provisions have effect at the beginning of the obligation period. The amount given by this step is the "duty derogation amount".

Step 5

In respect of the obligation period beginning on 15th April 2008 or 15th April 2009, subtract the duty derogation amount from £0.35. In respect of each subsequent obligation period, subtract the duty derogation amount from £0.30. The amount given by this step is the "buy-out price".

Step 6

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

(8) For the purposes of section 128(1), the period within which the sum must be paid to the Administrator ("the buy-out payment period") is the period beginning on the 15th April immediately following the obligation period in question and ending on 5th November in the same year.

(a) The rate of duty for bioethanol is contained in section 6AD(3) of the 1979 Act, as inserted by the Finance Act 2004 (c.12), section 10(3), and amended by the Finance Act 2007 (c.11), section 10(1) and (4).

(b) The rate of duty for sulphur-free petrol is contained in section 6(1A)(aa) of the 1979 Act, as inserted by the Finance Act 2004, section 7(5)(a), and amended by the Finance Act 2007, section 10(1) and (2)(b).

(9) Where a supplier does not pay all or any part of the sum to the Administrator by the end of the buy-out payment period—

- (a) the sum outstanding is to increase at the rate specified in paragraph (10) and the increase is to be calculated in accordance with paragraph (11), and
- (b) the increased sum is a debt due from the supplier to the Administrator until it has been paid in full.

(10) The rate for the purpose of paragraph (9)(a) is 5 percentage points above the base rate of the Bank of England as at the 6th November immediately following the buy-out payment period in question.

(11) The increase is to be calculated on a daily basis beginning on the 6th November immediately following the buy-out payment period in question, and ending on the date on which payment is received by the Administrator.

Re-cycling of buy-out payments

22.—(1) For the purposes of section 128(7) of the 2004 Act, the “transport fuel suppliers of a specified description” are any transport fuel supplier—

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

and who held one or more RTF certificates in an RTF account at the end of the obligation period in respect of which the sums referred to in section 128(7) were received by the Administrator.

(2) Subject to paragraph (5), the system of allocation of the sums referred to in section 128(6) is as follows—

- (a) each transport fuel supplier referred to in paragraph (1) must notify the Administrator of the number of RTF certificates held in the supplier’s RTF account which the supplier surrenders to the Administrator in relation to the obligation period in question;
- (b) those notifications must be given to the Administrator by the 5th November (or the next working day after 5th November, if 5th November is not a working day) immediately following the obligation period in question;
- (c) where a supplier fails to notify the Administrator by that date of the number of RTF certificates to be surrendered, the Administrator must deem the number to be nil;
- (d) the Administrator must calculate the total sums received by the Administrator pursuant to article 21(6) and (9) by the 5th December (or the next working day after 5th December, if 5th December is not a working day) (“the buy-out fund”);
- (e) the Administrator may also include in the buy-out fund any sum received by the Administrator pursuant to article 21(6) and (9) after the 5th December (or after the next working day after 5th December, if 5th December is not a working day) (“late sum received”);
- (f) the Administrator must allocate the buy-out fund in equal shares between each RTF certificate which is counted under article 21(3) or surrendered under sub-paragraph (a), and
- (g) the Administrator must make the payments, as soon as reasonably practicable after the date referred to in sub-paragraph (e), to the suppliers who held those RTF certificates at the end of the obligation period.

(3) In the case of any late sum received which the Administrator does not include in the buy-out fund pursuant to paragraph (2)(e) in relation to the obligation period in question (“the principal obligation period”), the Administrator must—

- (a) allocate the sums in equal shares between each RTF certificate which is counted under article 21(3) or surrendered under paragraph (2)(a), and

- (b) when making payments in relation to a subsequent obligation period, make the payments to the suppliers who held those RTF certificates at the end of the principal obligation period.
- (4) For the purposes of paragraphs (2) and (3), a supplier “surrenders” an RTF certificate where the supplier—
- (a) does not need the certificate to count towards the discharge of the supplier’s renewable transport fuel obligation (if any) for the obligation period in question;
 - (b) notifies the Administrator that the supplier renounces any further benefit from holding the certificate, and
 - (c) claims a share of the buy-out fund for the obligation period in question,
- and the RTF certificate is debited from the supplier’s RTF account accordingly.
- (5) In the circumstances set out in paragraph (6), the Administrator must make such provision as is fair and reasonable with regard to—
- (a) dealing with any sum paid by the supplier under article 21,
 - (b) allocating shares and making payments under this article, and
 - (c) any other matter requiring to be dealt with pending and following the final disposal of the court proceedings.
- (6) The circumstances referred to are where—
- (a) an RTF certificate held by a supplier is revoked,
 - (b) by way of court proceedings the supplier challenges the decision to revoke, and
 - (c) the court proceedings have not been finally disposed of by the 28th September immediately following the obligation period in question.

PART 6

IMPOSITION OF CIVIL PENALTIES

Civil penalties

23.—(1) The following provisions are designated for the purposes of section 129 of the 2004 Act: articles 7(2) and (6), 8(3), 12(4) and (6), 13(5) and (7), 16(4), 20(14) and 21(6).

(2) A supplier is liable to a civil penalty if that supplier contravenes article 7(2) or 21(6).

(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 (6), 13(5) or (7), 16(4) or 20(14)—

- (a) that supplier or other person knows, or has reasonable cause to believe, that the information or evidence is inaccurate, or
- (b) that supplier or other person does not know, and does not have reasonable cause to believe, that that information or evidence is inaccurate, but the condition set out in paragraph (4) or (5) is subsequently satisfied.

(4) In the case of article 7(6) or 8(3), the condition is that the supplier or other person has subsequently—

- (a) become aware that the information or evidence may be inaccurate but has not informed the Administrator of that fact within five working days of so becoming aware,
- (b) been informed by the Administrator that the information or evidence may be inaccurate but has not investigated and remedied the inaccuracy within such period as may reasonably be allowed by the Administrator, or

(c) become aware (other than by being informed by the Administrator) that the information or evidence may be inaccurate but has not investigated and remedied the inaccuracy within such period as may reasonably be allowed by the Administrator.

(5) In the case of article 12(4) or (6), 13(5) or (7), 16(4) or 20(14), the condition is that the supplier or other person has subsequently, but on or before the 28th September immediately following the obligation period in question—

(a) become aware that the information or evidence may be inaccurate, but has not informed the Administrator of that fact within five working days of so becoming aware,

(b) been informed by the Administrator that the information or evidence may be inaccurate, but has not investigated and remedied the inaccuracy within such period as may reasonably be allowed by the Administrator, or

(c) become aware (other than by being informed by the Administrator) that the information or evidence may be inaccurate, but has not investigated and remedied the inaccuracy within such period as may reasonably be allowed by the Administrator.

(6) For the purposes of section 129(2) of the 2004 Act, a civil penalty notice must be given by written notice to the defaulter.

(7) For the purposes of section 129(3)(a), “the specified amount” is—

(a) in the case of an account holder who has gained, or attempted to gain, one or more RTF certificates by contravening a provision referred to in paragraph (1), an amount equivalent to twice the value of the RTF certificates which the account holder has gained, or attempted to gain, and

(b) in any other case, £50,000.

(8) In paragraph (7)(a), the value of an RTF certificate is equivalent to the buy-out price, as calculated in accordance with article 21(7), for the obligation period in respect of which the RTF certificate is issued or would have been issued.

(9) For the purposes of section 129(3)(b), the turnover of the specified business of the defaulter is the applicable turnover for the business year preceding the date of the civil penalty notice.

(10) Where the business year preceding the date of the civil penalty notice does not equal 12 months, the turnover is the amount which bears the same proportion to the applicable turnover during that business year as 12 months does to the period of that business year.

(11) Where there is no preceding business year, the turnover is the applicable turnover of the defaulter for the period of 12 months ending on the last day of the month preceding the month in which the date of the civil penalty notice falls.

(12) Where in the application of paragraph (11) the defaulter has applicable turnover for a period of less than 12 months, the turnover is the amount which bears the same proportion to the applicable turnover during the period for which the defaulter has applicable turnover as 12 months does to that period.

(13) In this article—

“applicable turnover” means the amounts, ascertained in conformity with normal accounting practice in the United Kingdom, which are—

(a) derived by the defaulter from the supply of road transport fuel at or for delivery to places in the United Kingdom, and

(b) computed on an accruals basis so that those amounts relating to the period for which the turnover is being determined are taken into account, without regard to the date of invoice or receipt of payment,

after deduction of trade discounts, value added tax and any other taxes based on such amounts;

“business year” means a period of more than six months in respect of which a defaulter publishes accounts or, if no such accounts have been published for the period, prepares accounts; and

“date of the civil penalty notice” means the date on which the Administrator gives notice under section 129(2) of the 2004 Act.

Objections to civil penalties

24.—(1) For the purposes of section 130(2)(b) of the 2004 Act, the manner in which the notice of objection must be given to the Administrator is—

- (a) by delivering it to the Administrator,
- (b) by leaving it at the address of the Administrator, or
- (c) by sending it by post to the Administrator at that address,

and “delivering” includes transmitting by means of an electronic communications network, or by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) For the purposes of section 130(2)(b), the period within which the notice must be given is a period of 28 days beginning on the day immediately after the day on which the civil penalty notice is given.

(3) For the purposes of section 130(5), the manner in which the notification of the outcome of the Administrator’s consideration must be given is—

- (a) by delivering it to the objector,
- (b) by leaving it at the objector’s proper address, or
- (c) by sending it by post to the objector at that address,

and “delivering” includes transmitting by means of an electronic communications network, or by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(4) Section 193(3) to (7) of the 2004 Act applies in relation to the giving or sending of the notification to the objector under paragraph (3).

(5) For the purposes of section 130(5), the period before the end of which the notification must be given is a period of 28 days beginning on the day immediately after the day on which the notice of objection is given to the Administrator.

Signed by authority of the Secretary of State for Transport

Jim Fitzpatrick
Parliamentary Under Secretary of State
Department for Transport

25th October 2007

THE SCHEDULE

Article 6(2)

The Office of the Renewable Fuels Agency

Constitution

1.—(1) The Office of the Renewable Fuels Agency must consist of at least three but not more than seven members, who must be appointed by the Secretary of State.

(2) The Secretary of State—

- (a) must appoint a member to chair the Office (in this Schedule referred to as “the Chair”), and
- (b) may appoint a member other than the member appointed to chair the Office, as the Chief Executive of the Office.

(3) A member—

- (a) may not be appointed for a term of more than five years (but may be reappointed),
- (b) may resign by notice in writing to the Secretary of State, and

(c) must hold and vacate office in accordance with the terms of the member's appointment.

(4) Before appointing a member (other than the Chair), the Secretary of State must consult the Chair.

2. The Secretary of State may dismiss a member of the Office by notice in writing on the grounds that the member—

- (a) has been absent from meetings of the Office without permission of the Office during a period of more than three months,
- (b) has a financial or other personal interest which is likely to influence the performance of that person's functions as a member,
- (c) is the subject of a bankruptcy restrictions order (or interim order),
- (d) has had estate sequestrated in Scotland or, under Scots law, has made a composition or arrangement with, or granted a trust deed for, that person's creditors,
- (e) has misbehaved, or
- (f) is unable, unfit or unwilling to perform that person's functions as a member.

Staff

3.—(1) The Office may appoint employees.

(2) The power under sub-paragraph (1) may be exercised only if the Office has the approval of the Treasury as to—

- (a) numbers, and
- (b) terms and conditions of employment.

Proceedings

4. Where so required by the Secretary of State, the Office must establish a committee chaired by a member, and the committee must carry out the functions specified by the Secretary of State.

5. The Office may establish one or more other committees (which may include persons who are neither members of nor employed by the Office).

6. The Office may delegate a function to—

- (a) the Chief Executive,
- (b) any employee of the Office, or
- (c) a committee.

7. The Office must—

- (a) determine arrangements for the conduct of its proceedings (which may, in particular, include arrangements for a quorum), and
- (b) publish those arrangements.

8. The validity of any proceedings of the Office (including any decision on a reconsideration of a revocation under article 20) is not affected by—

- (a) a vacancy, or
- (b) a defective appointment.

Money

9. The Office may with the approval of the Secretary of State make to or in respect of members of the Office, employees or committee-members payments by way of or in respect of—

- (a) remuneration;
- (b) pension;

- (c) allowances;
- (d) expenses.

10. If the Secretary of State thinks that special circumstances of a person's ceasing to be a member of the Office make it appropriate to pay that person compensation, the Office may pay the person compensation of an amount approved by the Secretary of State (whether or not the person receives other benefits by way of pension).

11. The Office may with the approval of the Secretary of State incur expenditure in connection with advisory or other services provided to the Office.

12. The Office may not borrow money.

Accounts and audit

13.—(1) The Office must—

- (a) keep proper accounts and proper accounting records, and
- (b) in respect of each financial year, prepare a statement of its accounts.

(2) Every statement of accounts prepared under sub-paragraph (1)(b) must—

- (a) give a true and fair view of the Office's income and expenditure for the financial year in question and its state of affairs, and
- (b) comply with every requirement relating to the accounts which the Secretary of State has notified to the Office.

(3) The requirements notified under sub-paragraph (2)(b) may include, in particular, requirements relating to—

- (a) the information to be contained in the statement,
- (b) the manner in which that information is to be presented, and
- (c) the methods and principles according to which the statement is to be prepared.

14.—(1) The statement of accounts and other accounts of the Office relating to each financial year must be audited by the Comptroller and Auditor General.

(2) The Comptroller and Auditor General must send the Office a copy of the report on the accounts audited under sub-paragraph (1).

(3) The Office must send the Secretary of State—

- (a) a copy of the accounts audited under sub-paragraph (1), and
- (b) the report of the Comptroller and Auditor General.

(4) The Secretary of State must lay a copy of the documents sent to her under sub-paragraph (3) before Parliament.

Accounting Officer

15.—(1) The Secretary of State must appoint a member of the Office as the Accounting Officer of the Administrator.

(2) The accounting officer has, in relation to the accounts and finances of the Administrator, the responsibilities which are from time to time specified by the Secretary of State.

(3) Those responsibilities must include in particular—

- (a) responsibilities in relation to the signing of accounts,
- (b) responsibilities for the propriety and regularity of the finances of the Administrator, and
- (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Administrator are used.

(4) The responsibilities which may be specified under this paragraph include responsibilities owed to the House of Commons or its Committee of Public Accounts.

Information

16. The Office must give the Secretary of State information, advice and assistance about any matter in respect of which it has any functions if—

- (a) the Office considers it appropriate to do so, or
- (b) the Secretary of State asks the Office to do so in connection with the carrying out of any the Secretary of State's functions.

Conflict of interest

17.—(1) Before appointing a person as a member of the Office the Secretary of State must satisfy herself that the person neither has nor is expected to acquire a financial or other personal interest which is likely to influence the performance of that person's functions as a member.

(2) From time to time the Secretary of State must satisfy herself that no member of the Office has a financial or other personal interest which is likely to influence the performance of that person's functions as a member.

18.—(1) Procedural arrangements made by the Office under paragraph 7 must include arrangements under which a member, employee or committee-member who has a financial or other personal interest which is likely to influence that person's performance of a particular function is obliged—

- (a) to declare the interest, and
- (b) to withdraw from the performance of the function to the relevant extent.

(2) Procedural arrangements made by the Office under paragraph 7 must include arrangements under which a member, employee or committee-member who has a financial or other personal interest which is relevant to a particular function but does not fall under sub-paragraph (1) is obliged—

- (a) to declare the interest, and
- (b) unless the members of the Office direct otherwise, to withdraw from the performance of the function to the relevant extent.

Status of the Office

19.—(1) The Office is not to be treated—

- (a) as the servant or agent of the Crown; or
- (b) as enjoying any status, immunity or privilege of the Crown.

(2) The property of the Office is not to be regarded as property of the Crown or as held on behalf of the Crown.

Supplementary powers

20.—(1) Subject to paragraph 12, the Office may do anything which it thinks necessary or expedient for purposes connected with the implementation of provision made by Chapter 5 of Part 2 of the 2004 Act or by this Order.

(2) In particular the Office may acquire by agreement or dispose of land and other property.

(3) But the Office must not acquire by agreement or dispose of land without the approval of the Secretary of State.

Execution of documents

21.—(1) The application of the seal of the Office must be authenticated by the signature of a member or employee of the Office whom it has authorised for the purpose (whether generally or specifically).

(2) Any document which the Office is authorised or required by or under any enactment to serve, make or issue may be signed on its behalf by a member or employee whom it has authorised for the purpose (whether generally or specifically).

(3) Every document purporting—

- (a) to be an instrument made or issued by or on behalf of the Office, and
- (b) to be duly executed under the seal of the Office, or to be duly signed or executed by a person authorised by the Office for the purpose,

shall be received in evidence and, unless the contrary is shown, treated without further proof as so made or issued.

(4) In this paragraph the reference to a signature includes a reference to a facsimile of a signature produced by any process and “signed” is to be construed accordingly.

(5) In this paragraph “enactment” includes—

- (a) an enactment contained in subordinate legislation,
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
- (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements Chapter 5 of Part 2 of the Energy Act 2004, and imposes on transport fuel suppliers who supply relevant hydrocarbon oil in the United Kingdom an obligation to produce evidence that a certain amount of renewable transport fuel has been supplied in the United Kingdom (the “RTF obligation”) (*Part 2*).

Part 3 of the Order provides for the establishment of a new body corporate as the Administrator, and this is to be known as the Office of the Renewable Fuels Agency (*article 6*). *The Schedule* makes provision about the Office as regards its constitution, staff, proceedings, money, accounts and audit, duty to give information to the Secretary of State, and any conflicts of interest. *Part 3* also makes provision about the Administrator establishing and maintaining accounts for transport fuel suppliers (*articles 7 to 11*), and making an annual report to the Secretary of State which is then to be laid before Parliament (*article 14*). It also confers powers and imposes duties on the Administrator as regards requiring information from suppliers (*articles 12 and 13*) and other matters (*article 15*).

Part 4 provides for the issue of RTF (renewable transport fuel) certificates to suppliers who are subject to an RTF obligation, and to other suppliers who are not so obligated. These certificates can then be produced as evidence that the obligation has been discharged. Certificates may also be transferred (*article 18*) or revoked (*article 20*).

Part 5 provides for the discharge of an RTF obligation by payment in cases where a supplier has not wholly discharged the obligation by producing sufficient RTF certificates. *Article 22* makes provision for the re-cycling of buy-out payments to certain transport fuel suppliers.

Part 6 provides for a person who contravenes certain provisions to be liable to a civil penalty. It also provides for the process of objecting to a civil penalty (*article 24*). Section 131 of the Energy Act 2004 provides for appeals to be made to the High Court (in England and Wales or Northern Ireland) or the Court of Session (in Scotland) where a person disputes a liability to a penalty or claims that the penalty is too high.

An Impact Assessment has been prepared and copies can be obtained from the Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR. A copy has been placed in the Library of each House of Parliament. A copy may also be accessed on the OPSI website www.opsi.gov.uk.

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SUSTAINABLE AND RENEWABLE FUELS

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