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STATUTORY INSTRUMENTS

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**2011 No. 2937**

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

**Sustainability criteria**

23. After the signature block, insert—

“SCHEDULE

Article 2

SUSTAINABILITY CRITERIA

**Interpretation**

1. In this Schedule—

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

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

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

“GHG” means greenhouse gas;

“low emissions area” means an area listed in a report submitted in accordance with article 19(2) of the directive as an area in which the typical GHG emissions from cultivation of agricultural raw materials can be expected to be lower than or equal to the emissions reported under the heading ‘Disaggregated default values for cultivation’ in part D of Annex V to the directive;

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

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

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

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

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

renewable transport fuel, the biofuel production pathway applicable to the part from relevant feedstocks of that renewable transport fuel;

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

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

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

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

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

“excluded land” means—

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

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

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

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

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

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

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

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

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

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

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

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

#### **Minimum emission saving**

- 4.—(1) For the purposes of this Schedule, the “minimum GHG emission saving” is—
- (a) in respect of renewable transport fuel supplied before 1st April 2013—
    - (i) where the fuel is produced in an old chain of installations, nil;
    - (ii) in any other case, 35%;
  - (b) in respect of renewable transport fuel supplied on or after 1st April 2013 but before 1st January 2017, 35%;
  - (c) in respect of renewable transport fuel supplied on or after 1st January 2017 but before 1st January 2018, 50%;
  - (d) in respect of renewable transport fuel supplied on or after 1st January 2018—
    - (i) where the fuel is produced in a new chain of installations, 60%;
    - (ii) in any other case, 50%.
- (2) In this paragraph “supplied” means “supplied at or for delivery to places in the United Kingdom”.

#### **Default value**

- 5.—(1) The default value referred to in paragraph 3(3)(a) is determined as follows.
- (2) Where in parts A(1) and B(2) of Annex V to the directive, a value is specified for a default GHG emission saving for the relevant biofuel production pathway, the default value is equal to that specified value provided that—
- (a) the emissions from land-use change are equal to or less than zero; and
  - (b) if the relevant biofuel production pathway is listed in part A of Annex V to the directive, the condition specified in sub-paragraph (3) is satisfied.
- (3) The condition referred to in sub-paragraph (2)(b) and paragraph 6(4) is that the raw materials from which the renewable transport fuel was produced were—
- (a) cultivated outside the European Union;
  - (b) cultivated in a low emissions area; or
  - (c) wastes or residues other than residues from agriculture, aquaculture, fisheries or forestry.
- (4) Otherwise an actual value determined in accordance with paragraph 6 must be used.

#### **Actual value**

- 6.—(1) The actual value referred to in paragraph 3(3)(b) is determined as follows.
- (2) The actual value is the percentage GHG emission saving from the use of the renewable transport fuel which percentage is obtained by multiplying the result of the calculation set out at paragraph 4 of part C(3) of Annex V to the directive by 100.

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

(3) Where in parts D(4) and E(5) of Annex V to the directive a default GHG emissions value is specified in respect of a variable in the formula set out in paragraph 1 of part C of Annex V to the directive, that GHG emissions value may be used in determining the GHG emission saving from the use of the renewable transport fuel for the purposes of sub-paragraph (2).

(4) But a default value for emissions from cultivation specified in part D of Annex V to the directive may only be used where the condition specified in paragraph 5(3) is satisfied.

### **Land criteria**

7. A relevant feedstock meets the land criteria if—

- (a) it was not obtained from land falling within any of the categories specified in paragraph 8(1); or
- (b) the exception set out in paragraph 9 applies.

8.—(1) The categories referred to in paragraph 7(a) are—

- (a) primary forest,
- (b) nature protection areas,
- (c) land which was formerly wetland or forest,
- (d) land which was peatland at any time in January 2008.

(2) For the purposes of sub-paragraph (1)(c), land shall formerly have been wetland or forest if it—

- (a) fell within a category specified in sub-paragraph (3) at any time in January 2008; and
- (b) did not fall within that category when the raw material was obtained from it.

(3) The categories referred to in sub-paragraph (2)(a) are—

- (a) land that is covered with or saturated by water permanently or for a significant part of the year;
- (b) land spanning more than one hectare with trees higher than five metres and a canopy cover of more than 10% or trees able to reach those thresholds in situ.

9.—(1) The exception referred to in paragraph 7(b) applies if—

- (a) the relevant land is not excluded land;
- (b) the relevant land falls within one or more of the categories specified in sub-paragraph (2);
- (c) the evidence specified in sub-paragraph (3) is provided to the Administrator in respect of each of those categories within which the relevant land falls; and
- (d) any requirement imposed under sub-paragraph (4) in respect of the provision of that evidence is complied with.

(2) The categories referred to in sub-paragraph (1)(b) are—

- (a) nature protection areas;
- (b) relevant forest;
- (c) land that was peatland at any time in January 2008.

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

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

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