

EXPLANATORY MEMORANDUM TO
THE RENEWABLE TRANSPORT FUELS AND GREENHOUSE GAS EMISSIONS
REGULATIONS 2018

2018 No. 374

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to amend:

- a) The Renewable Transport Fuel Obligations Order 2007 as amended (SI 2007/3072) (the “RTFO Order”);
- b) The Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 (SI 2012/3030) (the “2012 Regulations”);
- c) Section 132 of the Energy Act 2004 as amended.

2.2 The measures in this instrument aim to reduce greenhouse gas emissions from fuels supplied in transport, thereby supporting the delivery of savings to meet UK carbon budgets. They also align UK schemes with requirements in EU legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 The RTFO Order places an obligation on fuel suppliers to supply a certain amount of renewable fuel. It introduced a certificate trading mechanism to allow suppliers flexibility in how they met their obligation, and has been successful to date in supporting a market for renewable fuels which deliver reductions in greenhouse gas emissions. It is the UK scheme which implements the transport requirements of EU Directive 2009/28/EC¹ – hereafter referred to as the Renewable Energy Directive.

4.2 The Renewable Energy Directive requires that 10% of energy used in transport is renewable by 2020.

¹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

- 4.3 The 2012 Regulations currently include a requirement to report greenhouse gas emissions resulting from the use of transport fuels. This implements aspects of Article 7a of Directive 98/70/EC² – hereafter referred to as the Fuel Quality Directive.
- 4.4 The Fuel Quality Directive requires suppliers to reduce the greenhouse gas intensity of the fuels used in vehicles by 6% by 2020, when measured against a baseline representing typical greenhouse gas emissions of fossil fuel consumed in the EU in 2010.
- 4.5 This instrument implements the targets set out in the Renewable Energy Directive and the Fuel Quality Directive. It also implements amendments to the Renewable Energy Directive and the Fuel Quality Directive made by EU Directive 2015/1513 of the European Parliament and of the Council of 9 September 2015 - hereafter referred to as Directive 2015/1513.
- 4.6 It further transposes implementing measures under the Fuel Quality Directive in Council Directive 2015/652 of 20 April 2015 laying down calculation methods and reporting requirements pursuant to Directive 98/70/EC of the European Parliament - hereafter referred to as Directive 2015/652.
- 4.7 Directive 2015/1513 begins the transition from biofuels made from food crops towards advanced renewable fuels produced from wastes and residues which have low adverse indirect land-use change (ILUC) impacts³ and offer high overall greenhouse gas emission savings. It requires Member States to set a limit on the contribution that biofuels from food crops may make towards targets for the supply of renewable fuels set under the Renewable Energy Directive, and allows Member States to promote the consumption of advanced fuels by setting national targets. This is implemented through amendments to both the RTFO Order and the 2012 Regulations.
- 4.8 Directive 2015/652 sets a method for calculating and reporting the greenhouse gas emissions of fuels and other energy from non-biological sources for use in road vehicles, non-road mobile machinery (including inland waterway vessels which do not normally operate at sea), tractors and recreational craft which do not normally operate at sea. Directive 2015/652 further provides how upstream emission reductions (UERs)⁴, fuels used in aviation and the consumption of electricity in electric road vehicles may count towards achieving the 6% target set out in the Fuel Quality Directive. The Fuel Quality Directive target and the measures introduced by Directive 2015/652 are implemented through the amendments to the 2012 Regulations.
- 4.9 A Transposition Note for Directive 2015/652 and Directive 2015/1513 accompanies this Explanatory Memorandum.
- 4.10 Minor consequential amendments are also being made to the Energy Act 2004 to update definitions.

² Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC.

³ Indirect land use change or “ILUC” is where food crops are displaced from agricultural land by crops grown for biofuels. This can reduce food supply pushing up food prices, and can lead to increased levels of carbon dioxide emissions if the land was previously a carbon store.

⁴ Upstream emission reductions are reductions of greenhouse gas emissions that result from mineral oil extraction processes, such as reduced flaring (burning of unwanted petroleum gases) or venting (releasing unwanted petroleum gases into the atmosphere).

Scrutiny History

- 4.11 The proposal that resulted in Directive 2015/652 was the subject of an unnumbered Explanatory Memorandum. The House of Commons European Scrutiny Committee considered the Explanatory Memorandum on 29 October 2014. The Committee recommended that the document was politically important and cleared it (16th Report, Session 2014/15, 33215). The House of Lords Select Committee on the European Union referred the Explanatory Memorandum to Sub-Committee D at the 1560th sif of 21 October 2014 and subsequently cleared it from scrutiny by letter dated 6 November 2014.
- 4.12 The proposal that resulted in Directive 2015/1513 was subject to Explanatory Memorandum 15189/12 submitted by the Department for Transport on 8 November 2012. The House of Commons European Scrutiny Committee considered the EM on 28 November 2012. The Committee recommended that the document was politically important and did not clear it (21st Report, Session 2012/13, 34342). The House of Lords Select Committee on the European Union referred the Explanatory Memorandum to Sub-Committee D at the 1486th sif of 20 November 2012. The Chairman wrote to the Minister on 30 November 2012 to note that the Committee would hold the document under scrutiny. Ministerial letters were sent to the Lords Committee on 19 December 2012, 23 January 2013, and 20 July 2015, and to both Committees on 7 May 2013, 21 November 2013, 27 January 2014, 2 June 2014, 24 June 2014, 11 March 2015, and 2 July 2015. The Commons European Scrutiny Committee cleared the proposal from scrutiny on 4 December 2013 (Report 26, Session 2013/2014), and the Lords Select Committee on the European Union cleared it by letter on 8 July 2015.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 Jesse Norman MP, Parliamentary Under Secretary of State for Roads, Local Transport and Devolution, has made the following statement regarding Human Rights:
- “In my view the provisions of The Renewable Transport Fuels and Greenhouse Gas Emissions Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 In the UK, transport contributes around one quarter of greenhouse gas emissions. As demand for travel continues to grow, Government policy will need to reduce greenhouse gas emissions from transport to meet the UK’s future carbon budgets.
- 7.2 This instrument amends the RTFO Order so as to:
- Increase the targets for renewable fuels to 9.75% of fuel supplied in 2020 with further incremental increases to 12.4% by 2032. This will reduce greenhouse gas emissions from transport, and is designed to meet the target set out in the Renewable Energy Directive. Setting targets over this period is intended to provide long term policy stability to industry and investors.

- Set sub-targets for the supply of renewable fuels classified as ‘development fuels’. Starting in 2019, this will increase the incentives to supply the new types of advanced fuels which are of strategic future importance to the UK, including renewable aviation fuels.
- Place a limit on the contribution that renewable fuels produced from food crops can make to meeting targets to supply renewable fuels, setting that limit at 4% in 2018, 3% in 2026 and 2% in 2032. This decreases the risks associated with ILUC.
- Ensure that wastes which would be disposed of are eligible for greater incentives than those which have other productive uses.

7.3 This instrument amends the 2012 Regulations so as to:

- Set a 6% greenhouse gas emissions reduction obligation on fuel suppliers. This will reduce greenhouse gas emissions and deliver the requirement set out in article 7a of the Fuel Quality Directive.
- Provide rewards for greenhouse gas emissions savings in the form of credits which provide a market for measures taken to reduce such emissions and which can be used to evidence savings required by the new obligation.
- Create incentives for reducing emissions from the extraction of fossil fuels, for supplying renewable fuels used in aviation, and for supplying electricity and gaseous fuels used in road vehicles.
- Improve the transparency of the UK oil supply chain and the greenhouse gas intensity of fuel imported into the UK by requiring reporting of the country of origin of fuel reported under the Regulations.

7.4 The Department has considered options other than legislation. However, given that renewable fuels typically cost more than fossil fuels, it is not considered likely the reductions in greenhouse gas emissions or uptake in the supply of renewable fuels would be possible without the obligations imposed by these amendments.

Consolidation

7.5 There is no intention to consolidate the RTFO Order 2007 or the 2012 Regulations at this time.

8. Consultation outcome

8.1 In September 2014 the Department for Transport and Low Carbon Vehicle Partnership established a Transport Energy Taskforce to consider how EU 2020 greenhouse gas emissions reduction and renewable transport fuel targets should be reflected in UK policy and determine how low carbon fuels can help reduce greenhouse gas emissions from UK transport in the period to 2030 and beyond. The Taskforce reported its findings in March 2015

8.2 The Department then ran parallel formal consultations on proposed amendments to the RTFO Order 2007 and the 2012 Regulations between 29 November 2016 and 22 January 2017⁵.

⁵ The consultations were titled “Renewable Transport Fuel Obligation: proposed changes for 2017” and “Motor fuel greenhouse gas reporting: amendments”, and can be found at: <https://www.gov.uk/government/consultations/renewable-transport-fuel-obligation-proposed-changes-for-2017> and <https://www.gov.uk/government/consultations/motor-fuel-greenhouse-gas-reporting-amendments>.

- 8.3 The key proposals with respect to the RTFO Order were to increase targets for the supply of renewable fuels to 2020, and maintain that level until 2030, to provide long term policy stability to industry. Recognising the risks from indirect land use change we sought views on an appropriate and sustainable level for the use of crop derived fuels.
- 8.4 The Department received 606 responses to its consultation on the proposed changes to the RTFO Order, including 480 responses as part of campaigns organised by a number of UK based bioethanol suppliers.
- 8.5 Key messages from the campaigns were: support for proposals to increase the RTFO obligation level to 9.75% in 2020, concern at the lack of ambition shown in the proposed obligation level from 2020-2030, and support for setting the limit on the level of crop derived biofuel that may count towards the obligation at no less than 7%. Other respondents were also generally supportive of the 2020 target, but were split in their attitudes to the longer term targets, with some asking for greater ambition and others urging caution, particularly seeking strict limits on the supply of crop derived biofuels.
- 8.6 As result of these responses, the proposed targets were re-shaped. The 2020 target was retained as proposed, and the limit on crop based biofuels in 2020 was set at 4%, towards the centre of the proposed range. Addressing consultee concerns over the longer term targets, this instrument now proposes increases to the RTFO obligation level beyond 2020 and extends the period of the target trajectory such that the RTFO obligation level will reach 12.4% in 2032.
- 8.7 To address concerns about crop based biofuels, this instrument proposes that the limit on these fuels will be reduced after 2020, to 3% in 2026 and 2% in 2032.
- 8.8 The Department for Transport received 33 responses to its consultation on its proposals to amend the 2012 Regulations. The consultation responses were generally supportive of the proposed method of meeting the 2020 target, but there were concerns expressed about the targets proposed for 2018 and 2019.
- 8.9 Further to the consultation responses, a key change was made to the policy on interim targets. The Department now proposes to only set an interim greenhouse emissions reduction target in 2019 at 4% and is no longer proposing to set a 2% interim target in 2018. It is expected that this will avoid imposing unnecessary burden on suppliers, and that a 2% target would most likely be achieved in 2018 with little or no change to the current fuel supply. As a consequence, any benefits of the proposed 2018 target in driving additional greenhouse emissions savings would have been negligible.
- 8.10 The government responses can be found can be found online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/644843/renewable-transport-fuel-obligations-order-government-response-to-consultations-on-amendments.pdf and https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643031/cm-ghg-regs-consultation-response-web.pdf.

9. Guidance

- 9.1 Technical guidance is provided by the Administrator in support of its operation of the RTFO Order 2007 and the 2012 Regulations. This guidance covers interpretation of the legislation and details of the processes which fuel suppliers must follow to fulfil their obligations and claim certificates.

- 9.2 Updated guidance was the subject of a targeted consultation with industry between 9 October 2017 and 10 November 2017. A revised draft of the guidance accompanies this Explanatory Memorandum. As part of its ongoing engagement, the Administrator intends to write to suppliers to alert them to the proposed coming into force of these amendments and detailing the steps suppliers must take to fulfil any new obligations placed on them. The final guidance will be issued as soon as possible after any final instrument is made, and will be updated from time to time as necessary.

10. Impact

- 10.1 The impact on business of complying with the above amendments to the RTFO Order 2007 is estimated to be £351m in 2020, with an equivalent pump price impact of 0.9 pence per litre. The impact on business of complying with the above amendments to the 2012 Regulations is estimated to be £177m spread over 2019 and 2020. Any cost is expected to be passed through to fuel consumers with a maximum potential pump price impact estimated at 0.44 pence per litre.
- 10.2 The impact on the public sector has been estimated at £1.2 million. These costs reflect transitional administrative costs i.e. the cost to the Administrator of having to change reporting and IT systems so that they can record, reward and track greenhouse gas credits.
- 10.3 Two cost benefit analyses, covering amendments to the RTFO Order 2007 and the 2012 Regulations, are submitted with this explanatory memorandum and were published alongside the government responses to parallel consultations on these amendments on 14 September 2017.⁶

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to exempt those suppliers who supply less than 450,000 litres of relevant fuel in an obligation year from the new obligation to demonstrate reductions in greenhouse gas emissions through acquiring GHG credits.
- 11.2 This approach aligns with that in the RTFO Order 2007 which has the same minimum threshold for the Renewable Transport Fuel Obligation, and the current exemption from reporting requirements in the 2012 Regulations. To date these have both successfully minimised the potential impact on small businesses. The vast majority of consultation responses we received from stakeholders also approved of this approach.

12. Monitoring & review

- 12.1 This instrument proposes to put the Secretary of State under a duty to review the amendments to the RTFO Order 2007 and the 2012 Regulations to assess the extent to

⁶ The cost benefit analyses are: Annex A of “Renewable Transport Fuel Obligations Order: Government Response to the consultation on amendments” which can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/644843/renewable-transport-fuel-obligations-order-government-response-to-consultations-on-amendments.pdf; and Annex A of the “Motor Fuel Greenhouse Gas Reporting Regulations amendments: Government Response to the consultation on amendments”, which can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643031/cm-ghg-regs-consultation-response-web.pdf.

which the Regulations achieve their objective and publish a report of his findings no more than 5 years after they have come into force.

- 12.2 In tandem, amendments to the RTFO Order 2007 and 2012 Regulations will be successful if they enable suppliers to meet targets set to 2020, ensure renewable fuels contribute to the UK's Carbon Budgets beyond 2020 and build a firm platform for investment to develop sustainable advanced fuels for automotive, aviation and road freight sectors.

13. Contact

- 13.1 Hazel Schofield at the Department for Transport: 07788 646737, hazel.schofield@dft.gsi.gov.uk, or Joe Minns at the Department for Transport: 0207 944 4138, joe.minns@dft.gsi.gov.uk, can answer any queries regarding the instrument.