

SCHEDULE 3

Article 2(1)

LAND CRITERIA

Interpretation

1. In this Schedule—

“continuously forested area” means land of an area of more than one hectare which includes—

- (a) trees more than five metres tall providing a tree canopy cover of more than 30%, or
- (b) trees collectively having the capacity to provide a tree canopy cover of more than 30% which—
 - (i) are more than five metres tall, or
 - (ii) have the capacity to grow to a height of more than five metres;

“designated for nature protection purposes” means designated pursuant to the law of the United Kingdom or of any part of the United Kingdom or pursuant to the law of any country or territory outside the United Kingdom, for the purpose of protecting the natural environment;

“environmental quality assurance scheme” means a voluntary scheme which establishes environmental or social standards in relation to the production of woody biomass;

“exempt purpose” has the meaning given in paragraph 7;

“greenhouse gas emissions from the use of fossil fuel” has the same meaning as in Schedule 1;

“highly biodiverse grassland” is to be construed in accordance with Article 17(3)(c) of the Renewables Directive;

“lightly forested area” means land of an area of more than one hectare which includes—

- (a) trees more than five metres tall providing a tree canopy cover of between 10% and 30%, or
- (b) trees collectively having the capacity to provide a tree canopy cover of between 10% and 30% which—
 - (i) are more than five metres tall, or
 - (ii) have the capacity to grow to a height of more than five metres;

“primary forest” means woodland of native species, where there is no clearly visible indication of human activity and ecological processes are not significantly disturbed;

“protected source” has the meaning given in paragraph 5;

“relevant percentage” has the same meaning as in Schedule 1;

“relevant target” has the same meaning as in Part 1 of Schedule 2;

“sustainable source” has the meaning given in paragraph 6;

“wetland area” means land that is covered with or saturated by water—

- (a) permanently, or
- (b) for a significant part of the year; and

“woody biomass” means biomass which—

- (a) is, or is derived from, wood (other than an energy crop), and
- (b) is not a bioliquid.

Land criteria: bioliquids

2. A consignment of bioliquid meets the land criteria if the biomaterial from which the fuel was made—

- (a) was not obtained from a protected source,
- (b) was residue (other than residue from agriculture, aquaculture, fisheries or forestry), or
- (c) was waste.

Land criteria: woody biomass

3. A consignment of woody biomass meets the land criteria if—

- (a) at least 70% of the woody biomass was obtained from a sustainable source,
- (b) the woody biomass is used by the RO capacity of a generating station to generate electricity in a month in which at least 70% of all of the woody biomass used by the RO capacity of that generating station to generate electricity was obtained from a sustainable source, or
- (c) the woody biomass was certified by an environmental quality assurance scheme which ensures that at least 70% of the woody biomass certified by the scheme was obtained from a sustainable source.

Land criteria: other fuels

4. A consignment of fuel (other than bioliquid or woody biomass) meets the land criteria if the biomaterial from which the fuel was made—

- (a) was not obtained from a protected source,
- (b) was residue (other than residue from agriculture, aquaculture, fisheries or forestry),
- (c) was an energy crop in respect of which financial assistance was paid under the Energy Crops Regulations 2000(1), or under an equivalent financial assistance scheme, or
- (d) was added to the fuel for an exempt purpose.

Protected sources

5.—(1) For the purposes of paragraphs 2(a) and 4(a), biomaterial is obtained from a protected source if it is obtained from—

- (a) land which at any time during or after January 2008 was primary forest;
- (b) land which at any time during or after January 2008 was designated for nature protection purposes (unless the production of the biomaterial did not interfere with those nature protection purposes);
- (c) highly biodiverse grassland (unless the harvesting of the biomaterial was necessary to preserve the grassland status);
- (d) land which at any time during January 2008 was peatland (unless the cultivation and harvesting of the biomaterial did not involve the drainage of previously undrained soil);
- (e) a former continuously forested area;
- (f) except where sub-paragraph (2) or (4) applies to the biomaterial, a former lightly forested area; or
- (g) a former wetland area.

(1) [S.I. 2000/3042](#) as amended by article 6(2)(b) of [S.I. 2011/1043](#) and section 73(2) of the Countryside and Rights of Way Act 2000 (c.37) and regulation 3 of [S.I. 2001/3900](#). The Energy Crops Regulations 2000 have now been revoked by regulation 35(1) of and Schedule 5 to [S.I. 2014/3263](#), as from 1st January 2015.

(2) This sub-paragraph applies to biomaterial obtained from a former lightly forested area where—

- (a) the fuel made from the biomaterial was not a bioliquid; and
- (b) the greenhouse gas emissions from the use of the fuel to generate one megajoule of electricity did not exceed the relevant target.

(3) For the purposes of sub-paragraph (2)(b), the greenhouse gas emissions must be calculated using the method provided for in Part 2 of Schedule 2.

(4) This sub-paragraph applies to biomaterial obtained from a former lightly forested area where—

- (a) the fuel made from the biomaterial was a bioliquid; and
- (b) the greenhouse gas emissions from the use of the bioliquid to generate electricity were lower, by at least the relevant percentage, than the greenhouse gas emissions from the use of fossil fuel.

(5) For the purposes of sub-paragraph (4)(b), the percentage difference between the greenhouse gas emissions from the use of the bioliquid and the greenhouse gas emissions from the use of fossil fuel must be calculated using the method provided for in paragraphs 1, 2 and 5 to 18 of Part C of Annex 5 to the Renewables Directive.

(6) For the purposes of this paragraph—

- (a) biomaterial was obtained from a former continuously forested area if the land—
 - (i) was a continuously forested area at any time during January 2008, and
 - (ii) was not a continuously forested area when the biomaterial was obtained from it;
- (b) biomaterial was obtained from a former lightly forested area if the land—
 - (i) was a lightly forested area at any time during January 2008, and
 - (ii) was not a lightly forested area or a continuously forested area when the biomaterial was obtained from it; and
- (c) biomaterial was obtained from a former wetland area if the land—
 - (i) was a wetland area at any time during January 2008, and
 - (ii) was not a wetland area when the biomaterial was obtained from it.

Sustainable source

6.—(1) For the purposes of paragraph 3, woody biomass is obtained from a sustainable source if it—

- (a) was grown within an area of forest or other land which is managed—
 - (i) in a way that is consistent with—
 - (aa) the Forest Europe Sustainable Forest Management Criteria, or
 - (bb) a set of international principles for the sustainable management of land which meet the requirements specified in sub-paragraph (2); and—
 - (ii) to meet the requirements specified in sub-paragraph (4);
- (b) was residue from arboriculture carried out in an area which was not a forest;
- (c) was added to the fuel for an exempt purpose; or
- (d) was removed for the purpose of creating, restoring or maintaining the ecosystem of an area which was not a forest.

(2) The requirements specified in this sub-paragraph are that—

- (a) the principles have been adopted following a process (“the principle setting process”) which sought to—
 - (i) obtain a balanced representation of the views of interest groupings,
 - (ii) ensure that no single interest grouping could dominate the principle setting process, and
 - (iii) ensure that no decision on the contents of the principles could be made in the absence of agreement from a majority within each interest grouping involved in the principle setting process; and
- (b) can be changed by a process (“the change process”) which seeks to ensure that:
 - (i) no single interest grouping can dominate the process, and
 - (ii) no decision on changes to the principles can be made in the absence of agreement from a majority within each interest grouping involved in the change process.
- (3) For the purposes of sub-paragraph (2), each of the following is an interest grouping in relation to the forest or other location where the wood was grown—
 - (a) persons with interests which are predominantly economic in nature;
 - (b) persons with interests which are predominantly environmental in nature;
 - (c) persons with interests which are predominantly social in nature.
- (4) The requirements specified in this sub-paragraph are—
 - (a) harm to ecosystems is minimised, in particular by—
 - (i) assessing the impacts of the extraction of wood from the area and adopting plans to minimise any negative impacts,
 - (ii) protecting soil, water and biodiversity,
 - (iii) controlling the use of chemicals and ensuring that chemicals are used in an appropriate way,
 - (iv) wherever possible, using integrated pest management, and
 - (v) disposing of waste in a manner that minimises any negative impacts;
 - (b) the productivity of the area is maintained, in particular by—
 - (i) adopting plans to avoid significant negative impacts on productivity,
 - (ii) adopting procedures for the extraction of wood that minimise the impact on other uses of the area,
 - (iii) providing for all of the contractors and workers who are working in the area to be adequately trained in relation to the maintenance of productivity, and
 - (iv) maintaining an adequate inventory of the trees in the area (including data on the growth of the trees and on the extraction of wood) so as to ensure that wood is extracted from the area at a rate which does not exceed its long-term capacity to produce wood;
 - (c) compliance with the requirement in paragraph (b) is monitored, the results of that monitoring reviewed and planning updated accordingly;
 - (d) the health and vitality of ecosystems is maintained, in particular by—
 - (i) adopting plans to maintain or increase the health and vitality of ecosystems,
 - (ii) adopting plans to deal with natural processes or events such as fires, pests and diseases, and
 - (iii) taking adequate measures to protect the area from unauthorised activities such as illegal logging, mining and encroachment;

- (e) biodiversity is maintained, in particular by—
 - (i) implementing safeguards to protect rare, threatened and endangered species,
 - (ii) conserving key ecosystems in their natural state, and
 - (iii) protecting features and species of outstanding or exceptional value;
 - (f) those responsible for the management of the area (and any contractors engaged by them) comply with the local and national laws relating to health and safety and the welfare of workers;
 - (g) those responsible for the management of the area have regard to—
 - (i) legal, customary and traditional rights of tenure and land use,
 - (ii) mechanisms for resolving grievances and disputes including those relating to tenure and land use rights, forest or land management practices and working conditions, and
 - (iii) safeguarding the health and safety and rights of workers;
 - (h) there is regular assessment of the extent to which those responsible for the management of the area have met the requirements set out in paragraphs (a) to (g).
- (5) In this paragraph—
- “the Forest Europe Sustainable Forest Management Criteria” means the criteria for sustainable forest management in Lisbon Resolution L2 of the third Ministerial Conference on the Protection of Forests in Europe held in June 1998⁽²⁾;
- “integrated pest management” has the meaning given in Article 3(6) of [Directive 2009/128/EC](#) establishing a framework for Community action to achieve the sustainable use of pesticides⁽³⁾; and
- “local and national laws”, in relation to a site, means laws applying in the locality in which the site is situated, whether made at a local or national level.

Exempt purposes

7. For the purposes of paragraph 4(d) and 6(1)(c), biomaterial is added to a fuel for an exempt purpose if—

- (a) it is added to the fuel—
 - (i) to act as a binding agent, or
 - (ii) to reduce the emissions of dust, carbon dioxide, methane or nitrous oxide from the use of the fuel, and
- (b) it does not exceed 2% by weight of the fuel.

(2) Lisbon Resolution L2 is entitled “Pan-European Criteria, Indicators and Operational Level Guidelines for Sustainable Forest Management”. Copies are available at http://www.foresteurope.org/ministerial_conferences/lisbon1998. Copies can also be obtained from the Department of Energy and Climate Change.

(3) OJ No L 309, 24.11.2009, p71.